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THE ENVIRONMENTAL PROTECTION AGENCY'S POST-1987 OZONE AND CARBON MONOXIDE ATTAINMENT STRATEGY

HEARING

BEFORE THE

SUBCOMMITTEE ON
ENVIRONMENTAL PROTECTION

OF THE

COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS
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THE ENVIRONMENTAL PROTECTION AGENCY'S POST-1987 OZONE AND CARBON MONOXIDE ATTAINMENT STRATEGY

WEDNESDAY, DECEMBER 2, 1987

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON ENVIRONMENTAL PROTECTION,
Washington, DC.

The subcommittee met, pursuant to notice, at 1:33 p.m., in room 406, Dirksen Senate Office Building, Hon. George J. Mitchell [chairman of the subcommittee] presiding.

Present: Senators Mitchell, Graham, Lautenberg, Chafee, Stafford, Simpson, Durenberger, and Pressler.

OPENING STATEMENT OF HON. GEORGE J. MITCHELL, U.S. SENATOR FROM THE STATE OF MAINE

Senator MITCHELL. Thank you very much for your attention and for coming to order.

This is a hearing being held by the Subcommittee on Environmental Protection of the Senate Committee on Environment and Public Works on the recent announcement by the Environmental Protection Agency of its post-1987 ozone and carbon monoxide attainment strategy.

I apologize to all concerned—to my colleagues and to the witnesses—for the inconvenience of the change in the time for beginning this hearing. It was necessitated by the fact that the Senate Finance Committee is currently meeting in markup on matters related to the recent budget summit discussions, and this morning we were notified that those considerations will continue this afternoon beginning at 2:30. Since five members of this subcommittee, including myself and the ranking member, Senator Chafee, are members of the Senate Finance Committee, our presence will be necessary there for much of the afternoon, so we wanted to begin this hearing now to permit us to accomplish as much as possible before we have to go down to the Senate Finance Committee. Other members of this committee will continue and receive the testimony throughout the afternoon. Of course, we all will review it carefully at the appropriate time.

I would like to begin with a brief opening statement. I will then call upon my colleagues for statements and then we'll hear from our first witness, the distinguished Senator from Connecticut.

I believe that the EPA's post-1987 air policy is flawed in several important respects. First, it presumes that the agency has the au-

thority to not impose sanctions on areas that fail to meet air quality standards at the end of this year, as required by the Clean Air Act. Yet, analyses by the EPA's own Office of General Counsel and the General Accounting Office suggest that EPA cannot substitute non-statutory deadlines for the deadlines that are set forth in the law.

Second, the policy, if implemented, represents a distinct withdrawal of Federal participation in air pollution control. It is not enough for the Federal Government just to tell the States to control their air pollution, and then to stand on the sidelines as a cheerleader. This was the approach in place before the 1970 act and it was inadequate. The 1970 act and the 1977 amendments clarified that the Federal Government should actively work with States to control air pollution. The one Federal agency charged with protection of public health and the environment, the Environmental Protection Agency, should do much more than simply offer technical support.

Third, the EPA policy fails to provide sufficient assurance that areas will attain the air quality standards without unnecessary delay. The American people have already waited 10 years, or even longer in some areas, for clean air. Thirty-five million Americans live in areas where the quality of the air has actually declined in the past six years.

The policy announced by the EPA, as I understand it, provides areas with six-year extensions—in some cases, eight years—with no additional control requirements. When Congress previously provided an extension, it was conditioned upon implementation of additional control measures. That approach should continue to be applied as it is applied in S. 1894, legislation recently approved by the full Senate committee.

I support amendments to the Clean Air Act to clarify the application of sanctions and to permit areas which have not met the standards by the deadline to receive extensions, but those extensions must be conditioned on additional effort to achieve compliance as soon as possible.

Most importantly, these changes must be legislated. They require an Act of Congress. They cannot be adopted by the EPA without legal basis. Congress has not yet acted, and the attainment deadline draws closer. Rather than see sanctions be applied to all nonattainment areas at the end of this year, I would like to see substantive legislation enacted, realizing that the opportunity for Congress to consider such legislation is limited in the time remaining this session. I am prepared to support a short-term extension of three to four months. That should be limited enough to keep this issue high on all of our priority lists, and yet give us enough time to do the job and do it well.

Such an extension would eliminate the need for EPA to pursue this unwise and illegal policy, and I hope that if the Congress acts to extend the deadline, EPA will withdraw this policy.

I would like now to call upon my distinguished colleagues. The next two persons to be called on are the former chairman of the full committee and the former chairman of the subcommittee, and they are the two men who between them have done more than any

other Americans in this decade to protect the health of Americans and their environment.

I am very pleased to call upon the distinguished former chairman of the full committee, Senator Stafford.

OPENING STATEMENT OF HON. ROBERT T. STAFFORD, U.S. SENATOR FROM THE STATE OF VERMONT

Senator STAFFORD. Thank you very much, Mr. Chairman. Let me say that I would want to add a third name to those who played a major role in environmental legislation over the last 10 years, and that would certainly be yours, Mr. Chairman.

Senator MITCHELL. Thank you.

Senator STAFFORD. Without your help and Senator Chafee's and others working together, we wouldn't have accomplished the environmental legislation that we did.

Mr. Chairman, let me observe at the outset of my remarks that we're here today because of a deadline in the Clean Air Act. I would guess that Administrator Thomas and most everyone here would agree that, but for the date of December 31st, 1987 in the act, we would not be holding this hearing. I would also guess we might have trouble agreeing on certain other points about that date.

I've seen a legal memorandum making various arguments about what is or is not required by the act. Although I was one of the authors of the 1977 Clean Air Act Amendments, I know that what I believe to be the correct interpretation of the statutory language may well not be the reading that would be given by a court.

The position of this Senator was alluded to in a November 25th, 1986 memorandum by the General Counsel of the Environmental Protection Agency. A statement that I made on the floor of the Senate in 1977 is quoted to support the proposition that Congress may well have intended sanctions to apply in areas that do not meet the 1987 attainment deadline unless Congress acts prior to that deadline to change the law.

I want to make it clear that that was and is my understanding of the law. I also know that we will not resolve differences of opinion over the act's meaning here today. What I think is important today is to examine what I believe to be the fundamental differences in approaches to cleaning up unhealthy air in this country.

One approach is to conduct extensive modelling to determine what pollution reductions are needed to achieve a national standard that would require those levels of reductions. One of the bases for taking this approach is to avoid overcontrolling polluters. The only reductions required will be those needed to achieve healthy air, or so the theory goes. This is the approach that has been pursued for the past 17 years and the one that has left us with 88 cities with potential carbon monoxide problems and 77 areas with likely ozone problems after 1987. This is the approach with some—but not enough—constructive modifications that is embodied in the strategy that has been proposed by the Environmental Protection Agency.

EPA's proposal is to continue into the 1990's the policies which failed to achieve clean air in the 1970's and the 1980's. There would

be no additional tailpipe controls on cars or trucks. There would be no commitment to new control technology guidance and there will be little, if any, direct control of transported air pollutants.

This might be a reasonable approach if the situation were less urgent, but this committee has been told that upwards of 50,000 Americans die each year because of air pollution. This is a controversial estimate but it is also one which has not been discredited, despite years of efforts by its critics. The case in support of it has grown stronger with each passing year.

So, too, has the case grown in support of the proposition that the forest ecosystems of eastern North America are collapsing because of air pollution. We could continue with the list of reasons why the United States committed itself almost two decades ago to minimizing air pollution in this country. If we did, we would find that each of the reasons has now become a compelling argument, an argument for eliminating air pollution immediately, not planning for its elimination later on.

That is the key difference between EPA's approach and that of the committee. This committee mandates through the force of law a wide variety of controls. The vast majority of these could be imposed by the Administrator or the States under existing law, but that has not happened. It serves no good purpose to argue over who is responsible for these mistakes, nor does it serve any particular purpose to argue over whether a deadline extension is necessary. Obviously, it is. But any extension should be either very short—only long enough to allow the Congress to legislate within the next few months, as the Chairman has suggested—or have explicit pollution controls tied to it. Any extension of more than a few months, whether it passes as a complete reauthorization of the Clean Air Act or a floor amendment to an appropriations, it should be accompanied by mandatory controls. These should at the very least include tighter tailpipe standards for cars and trucks.

Thank you, Mr. Chairman.

Senator MITCHELL. Thank you very much, Senator Stafford.

Senator Chafee?

OPENING STATEMENT OF HON. JOHN H. CHAFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator CHAFEE. Thank you very much, Mr. Chairman. I want to thank you for the kind remarks you made in introducing Senator Stafford and me. I want to reiterate what Senator Stafford said, that in any list of those who have been instrumental in improving the environment of the United States—and indeed, the world—over the past several years, certainly the name George Mitchell should be there. We appreciate the leadership that you are giving to the subcommittee and your contribution to the whole committee.

Regarding the November 17th announcement of EPA, I disagree with it on three counts, political, legal, and substantive.

First, political. By providing relief to areas that are facing the deadline of December 31st, EPA is undercutting the political pressure to address the issue legislatively. This new policy, until it is overturned by the courts, will take the heat off Congress and it un-

dercuts our ability to pass legislation on this and other matters, such as acid rain, municipal waste incinerators, toxic air pollution.

Secondly, the policy is based, in my judgment, on a mistaken reading of the law that definitely will be challenged in court, and EPA will lose. The law does not give EPA the authority to extend the deadline. The agency cannot amend the law by administrative fiat. This strategy is a waste of time, and while it is going on people will continue to breathe unhealthy air.

Finally, there is the substance of the proposal. EPA should be calling on areas to take concrete, specific steps to reduce pollution and should be requiring actual pollution controls such as Senator Stafford mentioned. EPA's new policy emphasizes another round of planning and paper exercises. Again, this translates into lost time in getting rid of unclean air. The people of the country want clean air. They don't want another paper exercise that can be twisted and manipulated. We have had too many years and too many plans showing attainment with the standard. They haven't worked in the past and there's no reason to expect them to work in the future. We need action and not another decade of uncertainty.

Thank you, Mr. Chairman.

Senator MITCHELL. Thank you, Senator Chafee.

We are now pleased to call upon Senator Lautenberg, a very valuable member of this committee who has played a key role in Superfund and other important environmental laws in recent years. Senator Lautenberg.

OPENING STATEMENT OF HON. FRANK R. LAUTENBERG, U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator LAUTENBERG. Thank you, Mr. Chairman. And thank you for the timeliness of this hearing and for the leadership that you have provided in trying to straighten out this situation that we find ourselves in.

I understand the House is now considering whether to approve long-term or short-term extensions for clean air sanctions. We need to understand what an extension will mean for the people of this country. We need to know the price that we're going to have to pay for it.

I want cleaner air. All of us want cleaner air. In order to get it, we need a new clean air bill. The Clean Air Act hasn't been revised in nearly 10 years, and let's face the facts, without the threat of sanctions it will be another 10 years before we get a clean air bill. I want a clean air bill now.

Nearly half the counties in my State, the State of New Jersey, can't meet the ozone standard. That means that half of New Jersey's citizens breathe unhealthy air every single day. It's true that our committee bill buys time for communities to clean up their air, but the price for that time is additional, stricter control measures. The more time you buy for an extension, the more pressure we have to put on. It's not a good bargain to grant an extension without getting a substantial commitment up front for cleaner air in return, and that's the kind of a bad bargain that EPA looks like it wants to cut. I want no part of it.

I'm sorry that we don't have Mr. Thomas here with us now because this looks like we're kind of ganging up, and I think he ought to hear it directly. I know he'll have a chance with his staff and by looking at the record to get a full transcript of this, but I think it would be good if Lee were here to hear it.

EPA is offering a deal that it has no power to make. EPA is selling the public a lemon of a clean air policy and not only that, it's not the agency's lemon to sell.

We do know what will happen. Without a new law, the courts are going to step in. They'll throw out EPA's policy and they'll put in the sanctions. The result could be the worst of both worlds. We won't have the controls that give us cleaner air, but we'll still have the sanctions. New Jersey and other communities will be faced with construction bans and cuts in highway funds; at the same time, EPA will have jeopardized our ability to make badly-needed improvements to the Clean Air Act. The temporary removal of sanctions eliminates the critical leverage we need to have to move the clean air bill.

EPA ought to reconsider its policy. We don't need a new half-hearted program; we need a new law. Mr. Chairman, we welcome our distinguished colleagues from Connecticut and Colorado, and the Mayor of Denver to our hearing today. Denver is a beautiful city; when you can see it, it's magnificent.

And when you can't see it, you don't have to look at the air pollution index on Denver TV to know what's happening. We ought to get on with this job. We haven't met the targets that we initially established. Here's an opportunity to really set the program into place and do it effectively.

I thank you, Mr. Chairman.

Senator MITCHELL. Thank you, Senator Lautenberg.

I'd just like to note that we did change the time of the hearing. Mr. Thomas is going to come as soon as he can.

Senator LAUTENBERG. I wasn't accusing him of cowardice. Not at all.

Senator MITCHELL. Right. I know you weren't.

Senator LAUTENBERG. That's not Lee Thomas' character.

Senator MITCHELL. Right.

Senator LAUTENBERG. He's a brave, up-front guy. When we have a difference, it's a respectful difference. He's an outstanding administrator.

Senator MITCHELL. I just wanted to make clear that it was due to our change of the time.

We are now pleased to hear from our distinguished colleague from Connecticut, Senator Weicker.

STATEMENT OF HON. LOWELL P. WEICKER, JR., U.S. SENATOR FROM THE STATE OF CONNECTICUT

Senator WEICKER. Mr. Chairman, thank you very much, members of the panel, Senator Chafee, Senator Stafford, Senator Lautenberg.

When I first came to Congress in 1969 this country was beginning to realize the great need to protect our environment; not just to maintain scenic vistas, but for the protection of our health and

our children's futures. I am proud to have played a role in the landmark environmental legislation of the early 1970's, including the Clean Air Act, legislation that signalled our commitment to fighting pollution.

Today, nearly two decades later, we know from experience that the fight is not an easy one. We can't clean our air with the simple passage of a law or clear our streams with a departmental decree. Clean air is hard work, and it doesn't stand a chance of becoming reality without an enduring commitment.

Fighting pollution has always been recognized as a joint Federal-State effort. While it is up to the States to comply with the clean air standards, it is the task of the Federal Government to provide strong guidance and confirm that the States are meeting those standards. Unfortunately, over the course of the last seven years we have seen a virtual abdication of the Federal Government's share of the clean air commitment.

The Environmental Protection Agency, which is supposed to be the watchguard of our environmental law, has announced its intentions to delay the imposition of sanctions against cities and communities that have failed to meet air quality standards.

Let me make this clear right now: the EPA has no authority whatsoever to disregard the very clear mandates of the law. Only Congress has the authority to delay imposition of these sanctions.

The Ninth Circuit Court of Appeals in a ruling on implementation of the Clean Air Act concluded:

> Because we find the language of the act clear and unambiguous, we do not believe that EPA has the discretion to ignore the statutory deadline. Placed between the express intent of Congress and the recalcitrance of the Agency, the proper role of the court in this case must be to remind the agency that its duty is to apply the existing law.

The EPA must apply the existing law. If there are reforms to be made, as many of us believe there are, they must be made legislatively by an act of Congress.

The EPA's plan, which is to require a new planning effort by the States, effectively postponing attainment by at least five to seven years, makes a mockery of the integrity of environmental law and the quality of our commitment to achieving clean air. By delaying enforcement of the law, EPA is saying that the Federal Government is in no hurry to do anything about the problem. It says that if the States can't meet the deadline now, no big deal; go back to the drawing board, come up with a new plan, and if that one doesn't get the air clean, who is to say we'll not extend the deadlines yet another time?

Yesterday I introduced a Senate resolution, now before this committee, which speaks directly to this issue. The resolution states that "The EPA shall take no action of its own to delay attainment of the air quality standards set out under the Clean Air Act."

I want to point out that I come from a State that has not yet met the standards. The fact is that even if every major source of these pollutants in Connecticut were shut down, the State would still be in violation because of transported pollution from other States. The same problem plagues Massachusetts, Rhode Island, New York, the entire region, yet the Commissioners of these States' Environmental Protection Agencies all object to the EPA's actions.

Connecticut and the States of the northeast that all have to deal with the ill effects of air pollution do not want more planning. They do not want to avoid the clean air standards. They recognize that the costs of air pollution in terms if health and lost productivity are enormous.

What the States want is action. They need the Federal Government to step up to bat and deliver in terms of strengthened controls and firm guidance. They look to Washington for strong leadership and commitment, not for a shrug or a wink. Because pollution is a regional and a national problem, they need the coordination that only the Federal Government can provide.

The EPA's proposed extension is unacceptable both in terms of its questionable legality and its message. The time has clearly come for Congress to take the decisive action that the States are looking for, and those of us in Congress must not only insist that EPA uphold the law, but we must also do our part.

It has been 10 years since the Congress has reauthorized the Clean Air Act. We need revisions to attack the existing problems, particularly the transported pollution problem. I am pleased that the committee has reported out the Clean Air Standards Attainment Act of 1987. I am proud to be an original co-sponsor of that legislation. This is a bill that contains measures which the environmental Commissioners of the seven northeastern States have gone on record as supporting. They support it because it effectively addresses the difficult attainment situation instead of retreating from the problem.

If the Senate will move to expedite its consideration of this bill, we can send the message to the States that we are an equal partner in the clean air fight and we can reaffirm our commitment of two decades ago to protect the health and welfare of our citizens.

I thank you very much, Mr. Chairman and members of the committee.

Senator MITCHELL. Senator Weicker, thank you very much for your statement.

Are there any questions of Senator Weicker?

[No response.]

Senator MITCHELL. There being none, thank you very much for coming.

Before we call upon our colleague from Colorado, I note the presence of our distinguished colleague from Wyoming, the assistant minority leader. I know he has a very busy schedule.

We are grateful for your attendance. If you have an opening statement, Senator, that you care to make or place in the record, we'd be pleased to receive it.

OPENING STATEMENT OF HON. ALAN K. SIMPSON, U.S. SENATOR FROM THE STATE OF WYOMING

Senator SIMPSON. Mr. Chairman, I do appreciate that and I appreciate what you're trying very hard to do here, with getting a Clean Air Act. I commend you for that.

I think we're going to see a lot of harping and criticism about the EPA and, of course, Lee Thomas for trying to do something constructive about ozone nonattainment. Let's face it, the reason he's

here is because we haven't done anything in Congress. I don't think Lee Thomas or EPA is to blame for the nonattainment problem. Congress and the local officials are the ones to blame. That's my view. And the reason we haven't produced a Clean Air Act since 1977—and I'd love to pass one—is that the ones we crank out of here are so extreme that they can never get passed and they never will. There is production of extreme legislation and it goes to the floor and it's got more holds on it than Hulk Hogan and André the Giant. I think we ought to tire of that and do something responsible and honest. We seem to be able, Mr. Chairman—and you and I have been involved; we've dealt with Superfund—we did that beautifully. You were a key to that, and so was our former Chairman, Senator Stafford. The Clean Air Act, safe drinking water, asbestos in schools, RCRA—we do that. We've done it very well. I'm very proud to be a member of this committee. And then we come to this; we've been here for 7 years, and it's the same old stuff. We should have taken what Gary Hart presented to us in 1979, from the Clean Air Commission. We'd have been smarter because there's a degree of purity sought here which is never going to be attained.

I just want to say, Mr. Chairman, on this issue right here, we have local officials and State officials and air quality administrators who don't want to face up to the hard and tough facts and the realities before them by requiring these controls at the State and local levels. Instead, they want the Congress to do it so they can then point to the Congress after we have done it and say, "The Feds did this to us. Boy, we tried hard to ward off the snakes, but the Feds did it to us." I don't think we ought to do that to them. I don't include the Mayor of Denver, Mayor Pena; I've come to know him. There are tough problems in the high mountain country with this, but I think that State and local officials have been wholly irresponsible, and they want us to come in and bail them out, make the tough decisions that they will not take. And I think we ought to say to them, "You go do it."

I think the agency has the authority to delay the imposition of construction bans, and if they don't have that authority we ought to give it to them. We need to have some radical changes to reduce ozone, but that doesn't include crippling the major population centers of the United States with unnecessary sanctions. I think the local governments have to get off their duffs and get with it.

Thank you, Mr. Chairman.

Senator MITCHELL. Thank you, Senator Simpson.

We are pleased now to be joined by the distinguished Senator from Colorado, who will introduce the Mayor of Denver. That is an area that is critically affected by this legislation. We've had the pleasure of both appearing before the subcommittee on previous occasions. Their interest and advice has always been extremely helpful.

So we welcome you again. Senator Wirth, we look forward to hearing from you.

STATEMENT OF HON. TIMOTHY E. WIRTH, U.S. SENATOR FROM THE STATE OF COLORADO

Senator WIRTH. Thank you very much, Mr. Chairman, members of the committee. I want to thank all of you for your expeditious action on the Clean Air Act Amendments of 1987, of which I am a proud co-sponsor. I look forward to that becoming law in this Congress.

I hope we can also have similar fast action on the need for a short-term—and I would underline "short"—deadline. It seems to me that EPA policy, possibly contrary to some of Senator Simpson's suggestions, has not been as responsible and helpful as it might have been for high altitude areas, and I will outline some of these areas. I think that is confirmed as well by an editorial in this week's Business Week, December 7th, on Clean Air Act deadlines which I would like to have distributed and made part of the record if I might, Mr. Chairman.

Senator MITCHELL. That will be included in the record at the close of your statement.

Senator WIRTH. Thank you very much, Mr. Chairman.

I would associate myself with the comments of Senator Weicker as well, who I think summed up this problem very nicely.

I am pleased to appear here today with Mayor Federico Pena—we appeared together earlier this year—to underline the need for action at both the Federal level and the local level, to reduce air pollution across the board. Mayor Pena will describe the tough actions and very tough agenda that Denver has embarked upon. We have met the ozone standard in the city of Denver, for the most part. We still have severe carbon monoxide problems; those will be described, I'm sure, by Mayor Pena.

The very substantial efforts made by the city and made by the State of Colorado must be supplemented at the Federal level by amendments to the Clean Air Act. Without strong local efforts and State efforts combined with strong legislation, Mr. Chairman, we could never meet the Clean Air Act goals in Denver. We cannot do it, nor do I believe we can do it in any of the 166 high altitude counties of the Rocky Mountain area.

You have very graciously agreed to a number of amendments which I have offered or supported, which will be very good for our back yard: high altitude testing, the amendment on cold starts, standards for light trucks, standards for diesels, inspection and maintenance programs, oxygenated fuel. These amendments, Mr. Chairman, were endorsed by a 9 to 1 margin by the Metropolitan Air Quality Commission. And incidentally, I would point out that almost all of these steps could have been taken administratively, Mr. Chairman. Almost every one of these could have been done by the EPA over a period of time. They have neglected to do so.

Further, when we get to the floor—we have discussed the possibility of amendments allowing States to have their own daylight savings program and setting tighter carbon monoxide emission standards from cars and trucks. We will work on that as we move toward the floor.

I hope we move quickly, Mr. Chairman. I am pleased that we're this close, and it is certainly a welcome change to be in a position

where we're looking forward and not simply fighting a defensive action against a concerted effort by the Administration and the EPA to dismantle the Clean Air Act, as I know you did on the Senate side and we did on the House side for so many years during the first half of the 1980's. I think it is ironic that some comments have been made to the effect that we have been malingering on this front. I can remember a vast amount of political time and capital being spent just to stay where we were in the early- and mid-1980's when attempts were being made to dismantle the Clean Air Act. I am delighted that we have the opportunity here to move forward and I look forward to lending whatever help I can to that effort.

I am particularly delighted to have Mayor Pena with us today. I really appreciate your invitation to the Mayor who, I think, has done a remarkable job of putting together the sort of coalition with the State government, the State Legislature and the local businesses that's necessary for the tough actions at the local level that we're proud of in Denver.

[The Business Week article follows:]

[From Business Week, Dec. 7, 1987]

DELAYING THE DEADLINES WON'T CLEAR THE AIR

The Clean Air Act of 1970 is the centerpiece of efforts by U.S. cities to control air pollution. Although great strides have been made in reducing carbon monoxide, a critical problem remains: ozone, the principal ingredient in urban smog. But it's already evident that our big cities can't meet a Dec. 31 deadline to comply with federal ozone standards—a deadline that has been extended twice. If the deadline is not met, the act calls for cutoffs of funds for federal highway and sewage-treatment plants and a ban on construction of new pollution sources.

On Nov. 17, Environmental Protection Agency Administrator Lee M. Thomas proposed delaying sanctions for at least three years. The Senate Environment & Public Works Committee has passed a bill that extends deadlines but stiffens the standards that eventually will have to be met. The House, meanwhile, is dithering over whether to push the deadline back either eight months or two years.

Tinkering with deadlines is not the only game being played. The states, which have the responsibility for adopting pollution-control policies, want a federal fall guy to blame for politically tough decisions. Each delay sends the signal that further postponements are available.

On Nov. 20 the Northeastern states agreed on a joint policy, but other areas need to strive hard for compliance. Their options include mandatory auto maintenance and inspections, controls on gasoline pump vapors, and greater use of car pools and public transportation. The deadline may have to be extended. If so, the EPA and the states must specify the steps to be taken so that our major cities will comply by the next deadline. Otherwise, it's nothing more than a charade.

Senator MITCHELL. Thank you very much, Senator Wirth.

Mayor, thank you for coming. Again, we welcome you and look forward to hearing from you.

STATEMENT OF HON. FEDERICO PENA, MAYOR, CITY OF DENVER, CO, REPRESENTING THE NATIONAL LEAGUE OF CITIES

Mr. PENA. Thank you very much, Mr. Chairman, Senator Wirth, and members of the subcommittee for the introduction. I am happy to be back here. I think it was about nine months ago that Senator Wirth and I were both here presenting testimony, making suggestions to the subcommittee on substantive changes to the Clean Air Act. I think I left you with one thought, and that was please keep our feet to the fire. So today, Mr. Chairman and Members, I will

not repeat that testimony of 9 months ago. Today I am here specifically to address the recent policy that has been issued by EPA.

Mr. Chairman, I would like to submit for the record the testimony of Colorado Governor Roy Romer, and I would like to formally submit my written testimony which is not only my testimony but the testimony on behalf of the National League of Cities.

Senator MITCHELL. They both will be included in the record in full.

Mr. PENA. Thank you very much, Mr. Chairman.

Preliminarily—and I'm sorry that Mr. Thomas is not here——

Senator MITCHELL. He's sitting right behind you now.

Mr. PENA. Oh, good. [Laughter.]

Senator MITCHELL. Mayor Pena, meet Mr. Thomas. [Laughter.]

Mr. PENA. Preliminarily, Mr. Thomas, I'd like to compliment you—— [Laughter.]

Senator MITCHELL. I have a feeling that's a short "preliminary."

Mr. PENA [continuing]. And seriously say that I congratulate you and EPA. I guess when we mention your name it is not taken personally; you are the head of the agency—but for recognizing that a post-1987 policy is in fact needed.

I also want to compliment EPA for recognizing that there are severities of problems among the areas of the country and for attempting to devise different standards depending on that severity.

I also want to applaud EPA for arguing strongly in the new policy that whatever strategies were originally proposed in all the 1982 SIP's around the country, that they be fully implemented. I think those are very laudatory aspects of the policy.

However, Mr. Chairman, on balance I am here to formally and very strongly oppose this policy, and I'd like to tell you why.

First, it may seem a bit peculiar to the members of the subcommittee that the mayor of a city like Denver, which is number one and number two in the carbon monoxide problem in the United States, is here opposing a policy which basically has let us off the hook. Normally, a mayor like myself would be here saying, "I like this policy," because as we interpret it—and perhaps Mr. Thomas can explain this—this policy essentially, and this is an approximation, gives the Denver metropolitan area until the year 2005 to comply with the Clean Air Act standards.

It is my position that this is not holding our feet to the fire. If anything, this policy puts the fire out.

Mr. Chairman, let me give five specific reasons for my opposition to the policy as a whole. Some of them have been touched on already by members of the subcommittee. After that, Mr. Chairman, as I did nine months ago, I would like to offer some constructive suggestions and some solutions on how to deal with the problem. I think it's not enough for me to come here and criticize the policy but to offer some suggestions. Let me first start with the reasons for my opposition.

Number one, it's illegal. There has already been ample discussion here today—I'm not going to debate with all the lawyers on the committee; I'm an attorney too, but the Abramowitz case is very clear. EPA, without congressional authority, cannot extend the deadline. And what troubles me the most is that after 17 years of trying to follow guidelines and standards by EPA, the last thing

that I need as the Mayor of Denver is a policy which is shortly going to end up in court, likely to be found unlawful by some court somewhere, and during this legal battle being asked to comply with the new proposed policy. That makes life for me as a mayor and for other elected officials around the country very, very difficult. If we've learned anything after 17 years it is that we need clear, legally sound and precise standards. I want to know what the rules of the game are going to be. I want to know what the playing field is going to be like so that we can move forward. And if we fail, we can accept the sanctions and admit that we failed, but policies which are going to be ending up in court and confusing the matter are not what we need today.

Second, I strongly oppose the 3 percent annual reduction standard. What that means for us, as I have already said, is that we think we'll have until about the year 2005.

Let me put that in perspective. That means that we will have 17 years from next year to comply with this standard. On top of the past 17 years that we have already been under the Clean Air Act, we will have one-third of a century before Denver is required to clean up its air, and that is unacceptable. We need, as has been stated by a number of the members of the subcommittee, to clean up our air now and we need to keep our feet to the fire.

Third, Mr. Chairman, I am bothered by the policy because, as it has been drafted, it appears to be a policy which is primarily directed at ozone and the carbon monoxide issue is sort of a stepchild to the policy. The facts are that 88 cities today are in noncompliance with carbon monoxide and 77 are in noncompliance with ozone, so carbon monoxide clearly is affecting more cities. In fact, this has become such an internal problem in EPA that we understand the Regional Office of EPA now wears a certain T-shirt. Members of the committee, I'd like to show you this T-shirt which the regional members of EPA bring to Washington when they talk to the national office. It simply says, "Carbon monoxide is important, too." So even the staff of the EPA are coming to the national office and saying, "Don't make carbon monoxide a stepchild. Make it a very important part of the policy." Clearly, from Denver's point of view, we're very concerned about that.

I'm opposed to the construction ban. Why? Not because it's a construction ban but because it is unfair and it is arbitrary. What EPA is proposing is that 14 cities from the very start, including Denver, be subject to the construction ban. No recognition is given to any of the good faith measures—and I would like to explain those, Senator Simpson, later on in my testimony—that cities and areas like Denver have used in the past few years. No acknowledgement of that whatever. And for those areas which have done nothing in the last few years, they are not subject to a construction ban.

I think if we're going to have a construction ban, and I support it, it should be based on criteria and standards which have a rational basis. I'll be suggesting that later on.

Fifth, members of the subcommittee, I oppose this policy because it begins to erode the current Federal-State-local partnership that we have. Let's look at what we currently have. We currently have a partnership where the Federal Government regulates tailpipe

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emission standards. The Federal Government provides funding to those of us at the local level to help us develop our plans. The Federal Government has given us come clear directions and some strategies which we might use to clean up our air, and then we at the local level have embarked on a number of strategies following that direction.

Now what do we have under this new proposal? We have no additional tailpipe standards. We now have, according to our local EPA office, fewer dollars to help us do the very expensive planning that is necessary, and we have been told to expect even fewer dollars in the future. Only one new strategy is being recommended for carbon monoxide, and that's an enhanced inspection and maintenance program. But we already have an enhanced inspection and maintenance program. We identified that two years ago. It is now in place. So that kind of support is not present in this policy.

So my conclusion, members of the subcommittee, is that this new policy is not a strong, clear statement from EPA that gives the kind of guidance that we very much need at the local level. I leave it to the members of the subcommittee to try to understand why it is that this is the policy that is being recommended by the EPA.

Now, I have been critical, and I don't want to be here just engaged in "EPA bashing" this afternoon. I want to present some recommendations. Let me first state what I think would be the ideal situation for all of us.

I would hope, members of the subcommittee, that the Senate could take action and pass a bill this year so that next year we could focus on the House. Now, I understand that that is an enormous challenge for the Senate, but I hope that you accept it and do all that you can to get it done.

If for some reason we need to deal with the deadline issue and we have to—I think that's the reality of the situation—I would support a short-term extension of a matter of months. I would hope that we could have a new Clean Air Act developed before the summer recess of next year because, with all due respect to the Senators, I do not want to come back and address the 101st Congress to talk about these very same issues. We've got to get the job done now.

Secondly, I recommend and support the grouping of cities by the severity of their problems. I understand that is part of the Mitchell bill. We should give the worst cities, like Denver, a little more time, but not until the year 2005—a little more time to clean up their air.

I support a 5 percent annual reduction standard to be applied, which is much more stringent than the 3 percent annual reduction standard.

Thirdly, I would ask that the Congress enact strict conditions on those cities which are going to receive extensions. It is not enough simply to allow the extension to occur. We need very strict conditions. We need more Federal backup and more than just the proposed enhanced I&M strategy which is being proposed.

We also need the following things at the Federal level. And let me say that while we at the local level can do all that we can—I'd be happy to describe what we've done in the Denver metropolitan area—we still need support from the Federal level. We need con-

trols on fleet vehicle emissions. We need specific transportation control measures. We need alternative fuel strategies which have the support of the Federal Government.

Fourthly, I believe a construction ban should be applied, but it should be applied on a rational basis. For example, why don't we adopt a policy which rewards those areas of the country which are making good faith efforts and impose sanctions on those parts of the country which are engaged in bad faith?

Let me be more specific. I believe that a construction ban should be applied in the following way.

Number one, if a State fails to submit a SIP, they should have a construction ban. If a State submits a SIP which is inadequate, they should have a construction ban. If a State submits an adequate SIP and then doesn't implement it, that State should face a construction ban. But at least the areas would know up front and from the beginning what the standard is going to be, and then you could measure good faith or bad faith as the basis for imposing the construction ban.

And lastly, members of the subcommittee, I would request that we continue—and in fact, that we enhance—the partnership that exists between the Federal Government, the State, and the local government. We need additional tools, additional controls on new car emissions. Senator Wirth's proposals on standards for cold starts, high altitude standards for light duty trucks, and the others that he has proposed are absolutely needed at the local level to help us.

We need the addition of a 10-year, 100,000 mile warranty which could be done at the Federal level. We need to lower carbon monoxide tailpipe standards from 3.4 grams to 1.5 to 2.0 grams per mile. That can be done at the Federal level. And if the Congress does those things at the Federal level, then in fact we have a partnership where the Federal Government is imposing standards and we at the local level are doing what we can. But jointly, we could clean up our air.

Let me conclude my testimony, Mr. Chairman and members of the subcommittee, by saying that many of these suggestions that I've made are already incorporated in one way or another in the two primary bills in the House and the Senate. I support them. I support them because first, they are legally sound. Secondly, they send a very clear message and a set of standards for cities to follow. Thirdly, they are fair and they are balanced. And fifthly, they restore the partnership which we very much need in our country and they continue to hold our feet to the fire, which we eventually need.

Thank you very much, Mr. Chairman.

Senator MITCHELL. Mayor, thank you very much again for your very thoughtful testimony.

We will now proceed to questions from the members of the panel. In accordance with the rules of the committee, the questioning will occur in the order in which the Senators appeared and will be limited to five minutes on each round until all questions have been completed.

We'll begin, then, with Senator Stafford.

Senator STAFFORD. Thank you, Mr. Chairman. I only have one or two questions.

I have listened carefully to all of the proposals that you have made, Mr. Mayor. You were right; a number of them are part of the bill which we very much hope we'll succeed in passing, either between now and Christmas or early next year.

You did propose that if an extension is necessary, it be a relatively brief one. Did you have a specific number of months in mind that you might consider appropriate?

Mr. PENA. Senator, there have been a number of time frames recommended already. I would hope that we do not go anywhere further than 6 to 8 months at the outside, at the very outside.

Senator STAFFORD. All right.

How big a city is the metropolitan area of Denver?

Mr. PENA. The metropolitan area is about 1.8 million people.

Senator STAFFORD. What has been done in Denver to try and comply with the current standards?

Mr. PENA. It's a long list, Senator, but I'll proceed.

Senator STAFFORD. Well, if you wish to, you might submit most of it in writing and just tell us very briefly.

Mr. PENA. Let me start from the latest strategies that we are employing.

Beginning January of next year, motorists in the front range will be required to use some form of oxygenated fuel, either MTBE or another oxyfuel. The program is that the following November and December of next year and January and February of 1989, the same alternative fuel would be required.

Secondly, we are in the fourth year of our Better Air Campaign which has seen a nine percent reduction in carbon monoxide, where we ask people voluntarily not to drive their cars on bad air days.

Thirdly, we have a ban on wood-burning stoves and fireplaces in Denver and five metropolitan cities where people are prohibited from burning their fireplaces and wood-burning stoves on bad air days.

We are experimenting now with compressed natural gas in city vehicles and other vehicles.

We have encouraged—in fact, convinced—our Regional Transportation District to change the kinds of diesel buses they have been purchasing in the past.

We have expanded our "park and ride" program.

We are now tackling the "brown cloud," which requires looking at emissions from stationary polluters, ranging from the power company to other companies in the metro area. And on and on.

So let me respectfully say, members of the subcommittee, that there are some of us at the local level who have been trying. We have been trying to impose as many strategies as possible, including an enhanced inspection and maintenance system, but we still need support from the Federal level. We need your backup and we need the constant pressure from you to keep our feet to the fire.

Senator STAFFORD. You have no other really large city near Denver to result in transported contamination over your area, do you?

Mr. PENA. The problem of transportation of certain pollutants is not as difficult an issue in Colorado. However, Colorado Springs, which is to the south of Denver, is in noncompliance; Greeley, which is north of Denver, is in noncompliance, so it has affected the entire front range.

Senator STAFFORD. All right. Thank you.

Thank you, Mr. Chairman. I may have other questions, but I'll try to submit them in writing rather than using the time.

Senator MITCHELL. Thank you.

Senator Lautenberg?

Senator LAUTENBERG. Mr. Chairman, I have no questions. I will just take a moment to compliment Mayor Pena for his eloquent statement. He presents a forceful case. The dilemma he faces is one that we face in State and municipal government around the country, and that is to say that we're willing to accept more sanctions if we have a realistic timetable to deal with this problem. The unique position that his city is in in terms of its altitude and the surrounding structure does present a very difficult position for the mayor, and I respect his forthrightness.

Our distinguished colleague from Vermont, when he asks about other cities in Colorado, I have a step-brother who lives in Julesburg, Colorado and we haven't had too many complaints about nonattainment from Julesburg, Colorado. It's about this big [indicating].

But my compliments to you, Mayor, for an excellent statement.

Senator MITCHELL. Thank you, Senator Lautenberg.

Senator Simpson?

Senator SIMPSON. Thank you, Mr. Chairman.

I do thank you for that very impressive presentation, Mayor Pena. It goes along with what I know of you. You and I have had some nice visits over the years on various subjects. You have a fine grasp of it, and you've done things. Our good colleague there, Senator Wirth, is correct about those early disruptive years with regard to the Clean Air Act, but that has not been the case since Lee Thomas has been on the scene. And I think that's something we want to clarify, that those were bad times. I was right in the middle of that as a member of this committee, but here we have an Administrator who recognizes the importance and tries to deal with it authentically and quite honestly, and I think sometimes we forget that.

The problem with a short extension as I see it, Mr. Chairman, is the gridlock of an election year. I can't imagine how in the world we'll ever get something out of here; we can't even do it in a nonelection year. So we put the Clean Air Act up in an election year; you've got, as I say, a legislative gridlock of extraordinary proportions. I think it would only compound the problem. If we're going to have an extension, I think it's got to go past the election of 1988.

Senator MITCHELL. Alan, I hoped it would have the opposite effect to that which your remarks suggest.

Senator SIMPSON. Yes, yes. I'm sure you did, George.

George is always difficult. I hate to practice law before him as a Federal judge. It wouldn't have been any fun at all, because he's always saying, "What are you saying?"

This is important. We get into this most complex act—this is an extraordinary bale of stuff, pages and pages if you've ever read the Clean Air Act, but paragraph 3—everybody in this place misses keeping your eye on the rabbit.

The first page of the Clean Air Act says in section 3, and I think this is so important, Frank, all of you, it says that "the prevention and control of air pollution at its source is the primary responsibility of States and local governments." That's what it says. And then it says, "Federal financial assistance and leadership is essential for the development of cooperative Federal-State-regional-local programs to prevent and control air pollution." But the law of the United States of America says that it is the primary responsibility—and that is the word of the statute—of the States and local governments to do this job.

I know we want to keep your feet to the fire, but there are other States that have evidently felt the fire with no heat from us. California adopted a very strong tailpipe standard, stronger than other States. Other States have gone into some curious things; we wouldn't want to do that in the high mountain States. Wyoming is involved there, too.

But I think we want to get back to the reality of the law and the Federal Government's participation is financial assistance and leadership, but it is not the primary responsibility of the Federal Government to do air pollution at its source. That's just the way it is.

I really don't have any questions. I would ask about driving habits. I've spent a lot of time in Denver in my lifetime. What types of mass transit programs or other—you mentioned some fuel requirements. Have the local governments done anything on their own initiative in that area?

Mr. PENA. In the area of mass transit?

Senator SIMPSON. In the area of the various individual driving habits because of the tremendous "brown cloud" of Denver.

Mr. PENA. Yes, Senator. The Better Air Campaign is specifically aimed at changing the driving habits of individuals. It has worked. In the last four years we have seen a nine percent reduction in carbon monoxide with a voluntary no-drive program in the metro area.

There are a number of other programs. Mass transit—there are some strategies on the books right now which will move us forward, but it will take us some time to deal with the mass transit issue.

Senator, if I could just comment on a couple of other things that were said.

The California example, as you know, is specifically exempted or grandfathered into the act, so the State of Colorado can only do what the State of California can do. We cannot independently go out and do tailpipe emission standards, and I don't believe the Senator is suggesting that all 50 States have independent tailpipe standards——

Senator SIMPSON. I'm just talking about innovation and things that you can do in your own source areas.

Senator WIRTH. Senator Simpson, out in California that was grandfathered in the legislation. We could not do that in Colorado.

We can't even go to the tight emission standards of California. They are exempt and have tighter standards than the other 49 States. They were ahead of the rest of the country when the Clean Air Act was written, but we cannot do that.

We talk about primary local responsibility or State responsibility. Eighty percent of the pollution in the Denver metropolitan area or Albuquerque or Salt Lake or any of the high altitude counties comes from mobile sources, and the only way we can attack the mobile source problem is from the Federal level. We could not have a different emissions standard for Salt Lake City and a different one for Denver and a different one for Omaha and a different one for Bangor, Maine. We have to have a uniform one, and that has to be done by us here. And that's been, as you know, one of the stickiest and most difficult problems, how stringent that standard should be. We now realize that we have to make that standard more stringent. I think, to be fair to Denver and the Colorado area, we have now imposed a very strict inspection and maintenance program, moved to oxygenated fuels, done everything we could do from the Denver and Colorado end of it, but they can never meet that unless we do our end, which is to tighten down on those standards, and EPA does its part on inspections and cold starts and that sort of thing. It has to be the partnership that we've all spoken of.

Senator SIMPSON. I certainly agree. I would just say again, though, that there are certain of the larger municipalities in America who I do not think are doing their job, and they come here for us to do it. I guess that's what I'm saying.

Would you agree with that?

Mr. PENA. Yes, I do agree with that, Senator. And for those cities, they should be sanctioned but the cities and those areas which have acted in bad faith and which have not lifted a finger, they should be sanctioned; but for those areas which have tried—and I'm not just tooting our own horn——

Senator SIMPSON. That has to be done very carefully, especially construction bans on your city.

Mr. PENA. Absolutely.

And let me just say finally, Mr. Chairman, I served in the State Legislature with Anne Gorsuch and Steve Durham, and it was during the time I was in the Legislature that we passed the inspection and maintenance law. And Senator, let me assure you with the strongest statement I can, we would not have passed the inspection and maintenance law were it not for the threat of Federal sanctions.

Senator MITCHELL. Thank you very much.

Senator SIMPSON. Thank you, Mr. Chairman.

Senator MITCHELL. Senator Graham?

OPENING STATEMENT OF HON. BOB GRAHAM, U.S. SENATOR FROM THE STATE OF FLORIDA

Senator GRAHAM. Thank you, Mr. Chairman. I have a brief opening statement I would like to submit for the record.

Senator MITCHELL. It will be done.

[Senator Graham's statement follows:]

OPENING STATEMENT OF HON. BOB GRAHAM, U.S. SENATOR FROM THE STATE OF FLORIDA

Mr. Chairman, I appreciate your holding this important hearing regarding EPA's policy announcement on post-1987 nonattainment strategy. Members of this Committee have adopted an excellent bill which spells out specific control mechanisms necessary to bring nonattainment areas into compliance. In light of our failure over recent years to bring 70 Major stringent control in an report to assure attainment in a timely fashion.

The policy announced by the Environmental Protection Agency can in no way assure attainment witin six to eight years. It suggests continuing down a path which we have followed to failure in 70 cases.

I have heard from representatives of Florida nonattainment areas, who want to see the nonattainment legislation approved as soon as possible. They want this legislation as a means of guidance to achieve the standard we have been unable to meet, despite good faith efforts. They also want this legislation so that they can have Federal backing behind their control programs. None of these areas are asking for sanctions; However, they are asking for direction. That is what the committee bill does. That is not what the EPA policy accomplishes.

Mr. Chairman, I look forward to hearing testimony today and thank you again for this opportunity.

Senator GRAHAM. Mr. Mayor, I want to thank you for your very helpful testimony. I'm an admirer of what you have provided to the city of Denver in leadership, and I thank you for sharing your experience with us this afternoon.

The issue of what constitutes good faith activity is one that this committee wrestled with in the Clean Air Act, trying to use that concept as an operative principle in the institution of sanctions. What would you suggest could be the characteristics that would differentiate good faith from bad faith activity when the consequence of the activity is nonperformance, failure to meet the standards?

Mr. PENA. Senator, in my testimony nine months ago I presented to the subcommittee some examples of what I thought could be criteria in establishing good faith. There are others, and these are simply recommendations—everything from whether the SIP has been approved—and it seems like a simple concept, but let me tell you what's happened in Denver.

Five years after we submitted our SIP in 1982, we still do not have either an approved or disapproved SIP by EPA. After five years. In 1982 EPA said the SIP was probably not acceptable. Two years later, a new leadership came in; we were told that perhaps it was going to be acceptable. We discussed that for two years. And now, very recently, we're being told that perhaps it will not be acceptable.

I have one month left to go to reach attainment and I still don't have a definite decision by EPA on whether I have an acceptable or an unacceptable SIP. That's one standard you can apply in——

Senator GRAHAM. But in that standard, the reason for non-acceptance or non-rejection of the SIP is not in the city's control?

Mr. PENA. That's correct. That's correct.

Maybe I'm misunderstanding your question, Senator.

Senator GRAHAM. I'm looking for some actions by State or local officials which could be indicative of either good faith or bad faith when the consequence under either standard is that you have not met the goals.

Mr. PENA. There are a number of things——

Senator GRAHAM. By definition you wouldn't be in a nonattainment status unless you'd failed to meet the goals. Now, of those who have not attained, how do you tell which ones have not attained in good faith and which ones have not attained in bad faith?

Mr. PENA. For example, if we had eight strategies in a SIP and we had implemented all of those eight strategies in good faith over a period of years and we were still not in attainment, I would argue that that city has acted in good faith. If we had eight and only did one, I would argue we have acted in bad faith. And I think it's that set of criteria which the Congress can establish which indicates and measures good faith and bad faith. There are a whole range of those which I think can be developed and put into the law so that, without subjective discretion by anybody else, we would know up front what those criteria are going to be and then we could all exercise our independent actions accordingly. And there are some other steps like that which I would suggest can be put into the law.

Senator GRAHAM. I was interested in your idea of giving some positive reinforcement and incentives for attainment. Would you, for instance, suggest that in areas like allocation of Federal highway funds maybe there should be a setaside that would go exclusively to those areas of the country that had met the Clean Air Act standards so that there would be a bonus for those areas that had complied?

Mr. PENA. Well, I support the idea of some kind of incentive and some kind of bonus. I would simply caution the Senator to make the bonus dependent not simply on attainment, but on good faith effort. For example, we don't have to do very much to come into compliance with ozone. In a year or so we will come into compliance with ozone with minimal efforts. Should I receive an incentive for that? I don't think so. But if I were a city that is seriously in violation of ozone and brought it down 25 percent with some dramatic efforts and was still in noncompliance, perhaps that city ought to get some incentives and some bonus.

So I would simply caution that the standard to be used be one of good faith and not simply absolute compliance. That may be one of the elements you might want to apply but by itself I don't think it should be the sole criteria.

Senator MITCHELL. Thank you very much, Senator Graham. Both as Governor and as a Senator you've displayed extraordinary interest and leadership in this area and you have been very helpful. We appreciate it.

Thank you very much, Mayor. We appreciate your presence and that of Senator Wirth. Thank you.

Mr. Thomas is our next witness. While he is coming up, we are pleased that we've been joined by our distinguished colleague from South Dakota, Senator Pressler.

Senator, do you have an opening statement you wish to make or to have placed in the record?

OPENING STATEMENT OF HON. LARRY PRESSLER, U.S. SENATOR FROM THE STATE OF SOUTH DAKOTA

Senator PRESSLER. I wish to have it placed in the record, Mr. Chairman, thank you, and I want to commend Lee Thomas and the EPA for their efforts to develop an effective carbon monoxide and ozone attainment policy. Without congressional action on this issue it is very difficult for EPA to develop a policy; unfortunately, it is unlikely that action other than a simple extension of the deadline will take place this year.

[Senator Pressler's statement follows:]

OPENING STATEMENT OF HON. LARRY PRESSLER, U.S. SENATOR FROM THE STATE OF SOUTH DAKOTA

Mr. PRESSLER. Mr. Chairman, thank you for scheduling this hearing on the Environmental Protection Agency's post 1987 ozone and carbon monoxide attainment strategy. With the attainment deadline rapidly approaching it is important that we look at this issue.

I also want to commend Lee Thomas and EPA for its effort to develop and effective ozone and carbon monoxide attainment policy. Without congressional action on this issue it is very difficult for EPA to develop a policy. Unfortunately, it is unlikely that action other than a simple extension of the deadline will take place this year.

I would hope that the committee will work with EPA in an effort to develop a effective and achievable policy to deal with ozone. Simply criticizing the proposed policy with not help to improve our air quality. We would all like to have various issues included in the attainment policy but we must also be realistic. Mr. Chairman, thank you for holding these hearings.

Senator MITCHELL. Thank you very much, Senator Pressler.

Mr. Thomas, welcome. We appreciate your willingness to appear here. On behalf of all of the members of the committee I apologize for the inconvenience to which you've been put by the change in the subcommittee's schedule. It is necessitated by the fact that just yesterday the Senate Finance Committee began its markup on the implementation of the budget summit recently concluded, and unfortunately just this morning the committee announced that it will be continuing its session beginning at 2:30 this afternoon, or just about now.

By coincidence, five members of this subcommittee are also members of the Senate Finance Committee: myself and Senators Chafee, Durenberger, Baucus, and Moynihan. They all wished me to express their regret at not being able to be here. I think that some of them may try to come at some point during the proceedings. I will have to leave shortly because one of the subjects that I am involved in will be debated there and I have to be present. So I regret that very much.

I do want to say that as always, this committee looks forward to your testimony. You know by now that you are held in very high personal regard by every member of this subcommittee, and we have benefitted from the many appearances that you've had. We have not always agreed with you, as is the case with respect to the subject matter today, but your relationship with this committee is living proof of the fact that we may disagree without being disagreeable and do so in a manner that hopefully is constructive and produces our common objective of cleaner air for all Americans.

So we look forward to your testimony. There will be no time limit on your testimony because, as a representative of the Administration, we want you to take as much time as you feel is needed to set forth your position on the issue.

Welcome, and go ahead.

STATEMENT OF HON. LEE M. THOMAS, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY, ACCOMPANIED BY FRANK S. BLAKE, GENERAL COUNSEL; AND PAUL STOLPMAN, DIRECTOR, OFFICE OF POLICY ANALYSIS AND REVIEW, OFFICE OF AIR AND RADIATION

Mr. THOMAS. Thank you very much, Mr. Chairman.

I first want to thank you very much for the hearing and the opportunity to come up and talk with the committee about this policy and this issue, and secondly say that I understand fully the scheduling difficulty you've got. If you or any member who is not here want to meet in another hearing or one on one, I'm not only ready but I want to do that. I think that this issue demands time and it demands a thoughtful process of discussion in order to understand fully what I'm trying to do and how I'm trying to work with the Congress in doing it.

Senator MITCHELL. Let me say, Lee, that I intend personally to avail myself of that opportunity, and I will convey that to those members of the subcommittee who could not be present today. We wanted you to come because I don't think it's wise to have this kind of policy debate occur through the newspapers, and we want to hear what you have to say, what's on your mind, and how we can all advance this toward our common objective.

Mr. THOMAS. Thank you, Senator. The opportunity to continue the discussion on this issue, which we really began a couple of years ago, is one that I welcome.

The final point I'd make, and then I just want to talk through this policy briefly, is that I listened closely to Mayor Pena of Denver and I would commend him and his city to you. It is a really good example of what local officials can do in dealing with air quality problems. I commend Denver for what they've done. They've really worked hard; they've made some tough decisions, and Mayor Pena is a good example of somebody who has shown leadership as well as the other officials out there, and I commend them.

I thought his comments were excellent. As a matter of fact, I would think you would find that Mayor Pena and I disagree on very little as far as his comments or his recommendations, and I feel certain once he understands our policy he is going to become a very strong supporter of it. Additionally, once he understands that we're in the process of public comment and can revise that policy and accommodate some of his concerns—such as the one about letting him off the hook—he will find that in fact we can take care of that.

Now, let me explain just briefly why I thought the policy was needed. We began this discussion—or I did—with this committee and with an awful lot of other people over a couple of years ago. We began it because clearly we anticipated that the December, 1987 deadline was coming, just as the December, 1982 deadline

came and went, and we had questions arising—"Well, what are you going to do come December, 1987 as far as sanctions are concerned? What are you going to do as far as continuing to achieve attainment?"

Senator MITCHELL. Go right ahead. I will have to leave momentarily. I apologize for that. Senator Durenberger has just joined us; I think he will have to return to Finance at some point fairly soon.

Lee, could I ask you to address in your remarks one comment, then I'll read the transcript and talk to you about it later, and that is if we were to enact an extension of relatively short-term, to expire sometime next year, what would you do with respect to this policy? I'd like to know that myself.

Mr. THOMAS. I will. That's a critical question. It depends on the language that you put on that extension, which is a critical issue.

First let me say very clearly, I have said all along and firmly believe that you need to revise the Clean Air Act. That should be the first priority. If you can't do that fairly quickly—I mean, in the next several months—clearly you've got to consider an extension, I think. But the language you put on that extension as to whether it's going to be a moratorium for eight months—like one proposal I saw which meant that sanctions got lifted; I really didn't have the authority to require anything, including going forward to try to meet these standards. I didn't support that at all. If it was language that said that during that period of time we continued to work hard toward trying to attain these standards, which means a lot of the things I'm talking about here—updating emissions inventory, going on forward and using sanction authority if a State is not moving forward to try to plan or attain or implement—then yes, I support that kind of language if you've got to look at an extension. Be sure that language gives us the authority to try to keep on achieving the Clean Air Act and doesn't just put an 8-month pollution window into law.

Senator MITCHELL. I can assure you that's not the intention of any member of this committee.

I guess my question is, if it were done in the manner you suggest would you support an extension of, say, 3, 6, 8 months, some time in that period?

Mr. THOMAS. No.

Senator MITCHELL. You wouldn't?

Mr. THOMAS. I would support that language with it. But the timing—I agree with Senator Simpson. I guess after 5 years of working with you all, and it's been a great experience, I've gone through a number of short-term extension processes. You remember the Superfund that we went through where we looked at—"Well, let's go forward with 3 months on getting money," and this kind of thing.

Go ahead and put a time frame in there that you really think is realistic for passing the revision of the Clean Air Act. For instance, I think if you were going to do revisions to the Clean Air Act related to CO and ozone dealing with this issue, I think that this Congress could do that in a couple of months with a relatively simple modification of the Clean Air Act. A number of the things I'm going to suggest here tie into that. I think you could do that. I think, for instance, if you said, "We're going to do that in the next

3 to 6 months," that is, just deal with those issues in a relatively simple, straightforward way, I think yes, you could get that done. Otherwise I don't think there's any way you'll get that done in short of a couple of years.

Senator MITCHELL. We have a vote underway now. I'd like to ask if Senators Stafford and Graham would object if I departed from the committee's ordinary rules and recognized Senator Durenberger to see if he wanted to make a statement or ask a few questions in the time we have because of his other commitments? And Senator Pressler, I'm sorry. Would any of the other members object to that?

[No response.]

Senator MITCHELL. Why don't you go ahead, Dave?

OPENING STATEMENT OF HON. DAVE DUREBERGER, U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator DURENBERGER. Mr. Chairman, you've asked one of the important questions and I think each of us can think of an ancillary question that relates to it.

I have a statement that I'd like to have made a part of the record, and I'm going to try to come back again if I can. I thank you very much.

[Senator Durenberger's statement follows:]

OPENING STATEMENT OF HON. DAVE DURENBERGER, U.S. SENATOR FROM THE STATE OF MINNESOTA

When the Environmental Protection Agency published its Post-1987 Nonattainment Policy on November 17, it also released a list of the areas which will most likely not meet the ozone and carbon monxide standards on December 31 of this year.

On that list there are 78 regions that will not be in compliance with the ozone standard. But only 27 of those areas actually have a deadline of December 31, 1987. These are the so-called "extension areas." The other 51 metropolitan and rural regions on that list had ozone attainment deadlines of December 31, 1982—deadlines that tolled five years ago.

On the carbon monoxide list 39 of the 88 communities are extension areas with dealdines in 1987. The other 49 communities had deadlines in 1982.

It is the status of those 51 ozone areas and 49 carbon monoxide areas with 1982 deadlines—let's call it 100 cases in total, although there may be some overlap—that I would like to call to the attention of the subcommittee today. There is, I think, a lesson to be learned by looking at these 100 cases.

Back in late 1982 and 1983, EPA had under consideration the very same issues which bring us to this hearing this afternoon. There was a NAAQS attainment deadline in the law—December 31, 1982. A large number of communities did not meet the deadline despite the rosy projections which had been included in their SIPs adopted years before. And the question occurred, "What action should the Federal Government take in response to non-compliance with the 1982 deadline?"

EPA first proposed to immediately disapprove all of the SIPs for the nonattainment areas. It listed 111 different communities which were not in compliance with the Act. And it said that a construction ban would be imposed in each of those areas. That was a February 1983 proposal made by Anne Gorsuch. But that proposal met with strong opposition from the communities that might be sanctioned and from others for other reasons. So in November of 1983, EPA—now with William Ruckelshaus at the helm—reversed course and announced that sanctions would not be imposed en masse. The law didn't require a construction ban for nonattainment, EPA found. That was really only intended to be a planning sanction, EPA said.

And so a new program was announced. All the areas which had a 1982 deadline and which still exceeding their standards would get a SIP call, that is, would be told that they had to revise their plans. The revisions would be due in a year. They

would have to include new measures to show attainment as expeditiously as practicable. EPA would approve those which showed attainment.

Not all of the areas were actually notified. In fact, only about 35 of the 111 areas got SIP calls indicating that their plans were deficient. Most of the areas receiving a notice revised and resubmitted their SIPs. But nothing more happened. EPA did not review these revised SIPs. EPA did not approve or disapprove these revised SIPs. EPA never notified the dozens of other communities which continued in nonattainment that their plans were inadequate. And today in many of these areas—at least 51 of these areas for the ozone standard and 49 for carbon monoxide—citizens continue to experience the hazards of unhealthy air.

Now I bring this mater to the attention of the subcommittee, because it is directly relevant to the discussion we wish to have with the Administrator today. 27 so-called extension areas are about to miss their deadline for compliance with the ozone standard. 39 extension areas are going to miss the deadline for carbon monoxide. And for those 66 areas, EPA is now proposisng to take exactly the same approach which it took back in 1983. Sanctions won't be imposed. Federal implementation plans will not be developed. Strong direction for new measures will not be required. Rather we will simply return to the planning process. These regions—and the regions which had a 1982 deadline which are still in nonattainment—will be given two more years to revise plans. EPA will have another year for review. And attainment will be required in a period that is as expeditious as is practicable—sometime in the mid-1990s.

That is not only the Post-1987 Nonattainment Policy. It was the Post-1982 Nonattainment Policy, as well. We've already had five years worth of experience with this policy. And it hasn't worked for 100 SIPS that were to demonstrate compliance with the standard in 1982. They are still nonattainment. They will continue to be nonattainment. Given the record there is no reason to believe that this approach is going to work for the areas that are only now reaching their deadlines. In fact, its less likely—since these extension areas have by definition more difficult pollution problems.

There is an alternative. That alternative is proposed in the bill which the Environment and Public Works Committee has reported, S. 1894. It would establish a new policy—a different course than was taken in 1982. One that reflects lessons learned from the failures—100 failures—of the 1982 policy.

Mr. Chairman, I hope that we can get this message out. Their is a record on which to judge the policy the Administration is proposing. The last time they made this proposal, they didn't even bother to approve the SIPs that were submitted. And virtually no progress has been made for these communities in the five intervening years. Let us not continue on that path when it is a proven failure. Let's put together a new policy, one authorized by law, one that really is part of the Clean Air Act developed jointly by the Congress and the Administration, in which we can all have confidence. That's the lesson we need to learn.

Thank you, Mr. Chairman.

Senator MITCHELL. All right. Then why don't you proceed now, Lee——

Mr. THOMAS. Looks like everybody's leaving.

Senator MITCHELL. It's got nothing to do with you.

We're going to have a recess at the moment, but you might think about the fact that someone may ask you to define what you meant when you said it was a great experience working with this committee for the past 5 years.

Mr. THOMAS. You don't want to do that.

Senator MITCHELL. That might take a while.

The committee will necessarily stand in recess for a brief period of time because of the rollcall vote now underway, and we'll resume upon the return of any member of the subcommittee. Again, I thank you, Lee, and look forward to working with you.

[Recess.]

Senator STAFFORD [acting Chair]. The committee will please come to order. We will wait just a second for people to be seated, and then we're going to resume Mr. Thomas' testimony.

As you can see, Mr. Thomas, by outwaiting the other members of the committee I have temporarily resumed the role I enjoyed for 6 years.

You and I have attended a number of these meetings during which you've been Administrator of EPA and I've been Chairman of this committee, and as the Chairman of this subcommittee told you earlier today, I'm certainly one of your admirers. I've wondered how you've been able to handle as many things as you have over the years. I say that while you and I know that I disagree with the action you have taken recently on clean air and ozone and CO.

So with no further ado let's resume your testimony at whatever point we stopped.

Mr. THOMAS. Thank you, Senator. I also am glad to see you back in the chairmanship chair. I enjoyed that role, as well.

The policy and why the policy was needed was really where I was, and I thought what I'd do is just briefly talk through that issue and then a little bit about what's in the policy.

Senator STAFFORD. Certainly.

Mr. THOMAS. It was needed because we were clearly coming up on the deadline of December 1987 and two fundamental questions were being asked. One was, what is going to happen to us if that deadline passes and we don't attain it? What's going to happen in terms of sanctions? We need to know.

The second is, what's going to happen when the deadline passes as far as how we're going to go forward to deal with clean air. As you recall, about two years ago I talked about the fact with you and others that I'm going to start a public dialogue on this issue. I had a major speech at that time and said, I think what we need to do is really face up to the fact that we haven't attained these standards, and it looks to me like it's going to be tough to do.

This is a continuation of that. Clearly, many areas are not going to attain by the date three weeks from now. As a matter of fact, over 100 cities will not attain the ozone or carbon monoxide standard by that date.

Clearly, there is no question in my mind that the agency has a responsibility to address the problem, and the problem I'm talking about here is nonattainment, not the deadline. I'm talking about nonattainment. Our goal is to attain those standards. The goal of this policy is to lay out a mechanism for attaining those standards.

Now, we thoroughly investigated the problem of carbon monoxide and ozone. I must tell you that I've spent an awful lot of time on it over the last two years and I've listened to a lot of people and I have tried to talk to a lot of people, and some people have listened to me. It is an issue that is not an easy one to deal with, particularly when you look post-1987, what we're going to do after 1987. There's not a lot of guidance there as to what we're going to do. That's one of the reasons I have so strongly supported the Congress going on forward and revising the Clean Air Act to give us guidance. It's one of the things that I think this policy can help, and the public dialogue that has gone along with developing it will go along with putting it in final place, will provide input to the Congress as they work to revise the Clean Air Act.

Second, clearly we've got levels of carbon monoxide and ozone that are above the levels that are protective of public health and welfare and we need to deal with that. There's no question about that. We know that the nonattainment problem is a complex problem. There aren't any "silver bullets" as far as this problem is concerned; it's one that's just going to take hard work, tough work, more of the kind of tough decisions that have been made in the past. And as I think I told you a year and a half ago, tough decisions on the part of the Federal Government, State government, local government and Congress will be required in order to come to grips with this problem.

It is not feasible to require attainment in the near term for most of the areas that are severe areas. Clearly, Congress recognizes that; I see that embodied in all of the legislation that's being considered. It's embodied in this policy, as well. A comprehensive program is needed to ensure expeditious progress; that is, let's move as expeditiously as practical. Let's make all reasonable efforts, the kind of things we've always talked about under the Clean Air Act. What we need to do is focus on what needs to be done by all levels of government for long-term solutions: that is, attainment in all areas with these standards.

The policy was also needed to facilitate revisions of the Clean Air Act. Lay it right out there in front of all of the officials who are going to have to implement it, the way in which EPA would go forward with implementation. Under most revisions of the Clean Air Act, much of what's in this policy would be the way we would go forward.

Additionally, I think it facilitates it by having public comment on many things that I think could be embodied in revisions of the Clean Air Act as I indicated the last time I was up here before the committee.

So let's look and see, then, what the policy does. That's why I felt it was needed.

It has several major elements to it. The first is, it enhances movement toward attainment and maintenance of those standards. That is its major element as far as a goal is concerned. Let's keep on moving toward attainment in all areas, and let's ensure that we have a maintenance component once we reach attainment. In this case we talk about 10 years, but it's an attainment/maintenance goal policy. It sets specific requirements for all areas in nonattainment. Everybody is going to have to go forward with a series of requirements that are specified in the policy. It requires every area to demonstrate attainment. Every area will have to show how they are going to reach an attainment point, attainment with the standards.

It requires implementation of tough controls and it uses sanctions to ensure performance. Those kind of things that the policy does are all consistent with what I've heard Members of this body—Members of Congress—say they want, what I heard Mayor Pena say he wanted, and clearly what I want.

The key elements of that ozone and carbon monoxide policy are four.

First, there's a balance between Federal and State responsibility. It tries to build on the requirements that both levels of govern-

ment—or all three levels of government in this case—have got to take actions. Clearly, it's not a "let's dump all this on the States." Clearly, it's not a "the Feds are going to do everything," but both of us are going to have to do a good bit in order to meet those standards, a good bit more than what we've already done so far.

It requires continuous progress. That is, let's not just look at a fixed attainment date that is arbitrarily set, but let's look at continuous progress toward that date periodically during the time frame. And let's ensure that people stay on a downward track toward that attainment date, another element that is embodied in most of the legislation that's being considered on the Hill as well.

Third, it allows varying attainment dates, another element that is embodied in most of the legislation, and that is recognizing that we've got very different problems in different places of the country as far as nonattainment is concerned. So it's going to be difficult to set one date or two dates or three dates. It takes that into account.

It builds on the existing statutory framework which gets at the issue of, is it legal or not?

Let me talk a little bit about each of those elements.

First, the balance. I've heard a good bit from some of my good friends at the State level that the policy does not represent an adequate balance, and I recognize that what they say is heartfelt and I understand why they say it. I feel like it does recognize an adequate balance. Clearly, we're going to take comment on that as well as the other parts of this policy.

Federal control—we've always had a very strong Federal motor vehicle control program. We intend to continue it under this program. We've got some efforts underway to tighten tailpipe standards for some part of the vehicle fleet out there. Clearly, though, we've already made tremendous progress in dealing with pollution as far as tailpipe standards are concerned. Some more can be made; this policy recognizes that.

It talks about the continued Federal rules that are going to be required, like gasoline volatility that I've proposed; on-board vapor recovery that I've proposed; the treatment, storage and disposal facility regulations that I currently have underway; control technology guidance, which is that guidance that goes out to local governments that they are required to put in place on stationary source controls. That's one that we've heard a good bit about. But as I've said in the past, just like with motor vehicles, we've already dealt with a good part of that emissions inventory. In other words, the existing CTG's, control technology guidance, have taken care of about three million tons of VOC's on an annual basis. If you look at the remaining ones, we could get maybe 600,000 to 700,000 additional tons if we did every one of them; that's 22 more source categories.

So as we do them, recognize there is far less result as far as emission reductions are concerned.

The same with tailpipe emissions. With our Federal motor vehicle control program tailpipe standards we've already gotten about 12 million tons of reduction. There's very little left. We've controlled 90 percent of the emissions, so each car has very little you can control. You're going to have to turn to controlling how many cars you have in certain areas, in my opinion.

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Additional Federal programs—clearly, the implementation oversight and ensuring expeditious implementation are clear components that will be strong parts of the Federal program.

On the State side, emissions inventories—one of the things this policy talks about is an expedited and broadened emissions inventory, one of the things we think is absolutely needed.

Attainment demonstrations—as I said, every area would be required to demonstrate attainment by a specific date.

Effective and enforceable rules.

One of the areas that seems to be controversial, but in my opinion the controversy has yet to be realized, is a minimum three percent per year net of growth beyond Federal measures. That is a tough standard to meet, tougher than most areas have been able to meet to this point. I regret you don't have some people on the panel following this who have begun to contact me saying it's a standard they don't think can be met, but it's clearly one of those things that we're going to take comment on. This is three percent beyond what we're going to require with Federal measures, three percent that has to accommodate growth as well.

Monitoring of progress and regular plan updates—clearly, both the continuous movement toward attainment and updating the plan.

Finally, the 10-year maintenance that I talked about.

Now, the second major element, the varying attainment dates—I've already mentioned that, so let me just quickly mention what it's all about. It recognizes the different areas and the fact that we're going to take different times to get there. But it talks about a realistic planning schedule, when plans are due, and it says, "let's use a fixed point for measuring how fast we want places to go toward attainment; we'll hold them to that." That's where the three percent comes from. What that means is, you're going to find anywhere from a couple of years out to probably as far as 20 years is going to be required for areas across the country to meet attainment. That's not unlike the time frame that you all have incorporated in your bill.

You also have very long time frames for some of the components, as far as 15 years with some extensions, in your bill. You recognize just as I do that it's going to be very difficult in some areas to come into attainment in a short period of time, "short" meaning even 10 years like the House bill.

But anyway, moving forward on that schedule with emphasis on expeditious attainment. It talks about construction bans if we don't have near-term movement on those schedules. It talks about using sanctions for failure to plan and failure to implement, just as we've all talked about in the past, just as Mayor Pena talked about for the future.

The third major element builds on the existing statutory framework. This is one that I really get excited about. It's a legal issue, the one that I hear a lot about. My General Counsel could probably explain it more eloquently as far as legal terms are concerned, but let me try and run through it.

What we tried to do is build on the existing statutory framework as far as this policy is concerned.

First, I think that you ought to revise and change the Clean Air Act, and I think you ought to incorporate in that act some of the components of this policy. That would eliminate any confusion—if there is confusion—about the legal basis for what I'm suggesting. However, if you don't do that, I think this policy is on firm legal ground because it is the policy that was adopted in 1983 by Bill Ruckelshaus that was supported by the Senate and the House almost unanimously after we passed the 1982 date. It was supported by the interest groups, both environmental and State and local, in statements to our agency, on the floor of this Congress, and by legal memorandum by the staff of this committee. It is a policy that says, we're going on forward after the date to try to attain the standard.

As you said, Senator Stafford, in 1983 in answer to the question, "What is EPA going to do after the 1982 deadline passes," your answer was, "EPA is going to do what the law requires. They're going to continue to work with the States to ensure that we attain the standard. They're going to ask the States to submit new State Implementation Plans. They're going to ask them to incorporate new regulations in those plans moving toward attainment, and they're going to do that to ensure that they attain the standard as expeditiously as practical." And we did that. We've done that for five years with those areas that did not meet that 1982 deadline.

Now, people say, "But wait a minute. There was a 1987 deadline." Well, the 1987 deadline, as you recall, is for those areas that couldn't attain in 1982, asked for an extension until 1987, agreed to pick up the inspection and maintenance program.

The legal issue is exactly the same issue in 1987. Many of these cities that we're talking about are not extension cities; they are cities that were supposed to meet the standard in 1982. We're going on forward in dealing with them and dealing with these extension cities exactly the way we did after the 1982 deadline passed. The difference is, I said that this time we're not just going to put out another SIP call and do another SIP review and say, "I want you to keep on trying, fellows," I'm going to define for you and take comment on clear criteria that I'm going to use. And so I put out and said the criteria for what is best reasonable effort, or "as expeditiously as practical." I used things like "three percent beyond the Federal effort." I used things like "as expeditiously as practical," with criteria below it. I gave specific requirements and I said, let's take comments on it because that's how we're going to judge what you're going to do.

Second, I said, "If you don't go forward and plan or if you don't go forward and implement, I'm going to use the sanction authority I've got."

The third thing I said was that clearly I couldn't change the deadline in the act, but those places that didn't plan under part D for the 1987 date, for those areas where I have moved forward and found nonimplementation, I'm going to use the sanctions. As you know, I've already proposed implementing sanctions in 12 areas around the country. We'll be going final in as short as two weeks from now on some of those areas, and you will continue to see that sanction authority used, clearly built around the existing deadlines in the act. Also, built around a second thing in the act, which is

how long do we give the States to plan? How long do we give them to implement? Well, under the act we talk about 3 to 5 years; that's what you've always talked about in the past. That's exactly what we'll use this time. Unless you change the law, we say, "If you come in with a plan and you can't show attainment in 3 years, or 5 years under certain conditions, you will get a construction ban sanction and you'll get it as soon as we've turned down your plan. However, you won't get the other sanctions if you continue to make reasonable progress as expeditiously as practical to meet the overall attainment date. We'll withhold highway funding and impose sewer grant sanctions."

That's what we fashioned, and it was fashioned exactly the way it was fashioned after 1982. It has been consistently applied since then, and that's exactly the way we intend to go forward. I would urge Congress to pick up those elements of the policy, put them into a quick revision to the Clean Air Act, and eliminate any confusion about whether Congress disagrees with what it said in 1983.

It requires continuous progress. I've emphasized that already. One element I haven't emphasized is the area of transport. It's a difficult part of this problem, particularly the northeastern corridor, Washington to Boston. That's the toughest area, and it's for ozone. It's not for carbon monoxide; primarily, it's for ozone.

We talk about transport in this. It's also an area I've suggested for changes in the act. Let me tell you, we're working on transport, and under this policy we deal with it in a couple of ways. One, in the northeast area, we deal with it—between the Federal programs that will apply in attainment areas and the planning and emissions areas that will be controlled by the States in the northeast, 95 percent of the emission sources that would contribute to transport over a 100-mile area, 85 percent over a 300-mile area. And by "area" I'm talking about outside nonattainment areas.

Now, we deal with the transport issue here in its majority. We go on forward and say, "With the improved scientific knowledge that we'll get out of our modeling effort through the ROMNET program," clearly in about 2 years we'll be able to update that with additional information and identify those areas that may be beyond that scope, and accommodate those. And accommodating them is one of the ways I've suggested the law should be revised, so we would have authority to do that in attainment areas.

So requiring continuous progress is the final element of this plan; incorporated in that is our ability to deal with transport through that and several other measures.

What does it all accomplish? Well, what we want to accomplish is the exact same thing you want to accomplish. There is absolutely no difference as far as our goals are concerned, and that is results. The results we are after are attainment of those standards. This policy talks about that. It's the kind of line we were looking for. This is exactly how we've laid it out and we're in the process of taking comment on it, and I'm hopeful that by the spring of next year we'll be able to move forward.

I am further hopeful that we will be able to move forward with it with a revised Clean Air Act that embodies most of it in it.

Thank you, Senator.

Senator STAFFORD. Thank you very much, Mr. Thomas.

As the Chairman of this subcommittee pointed out, it is regrettable that we're in conflict with the Finance Committee this afternoon because I'm sure a number of members of that committee who are also members of this committee would have preferred to be here to hear your testimony and to direct questions to you. Under the circumstances, I expect some of the members will want to avail themselves of your offer for one-on-one meetings, and others will want to submit questions in writing to you. Will that be agreeable to you?

Mr. THOMAS. Absolutely. Not only that, I welcome it. There's nothing I'd rather do at this point than sit down and have a substantive conversation with the members of this committee about this issue.

Senator STAFFORD. All right. I would have to say that, as usual, you have stated your position with clarity. You have been very articulate in doing it. Whenever two lawyers discuss something, usually they end up on opposite sides. I know you have your General Counsel here.

I think I would start by saying that in this year, in 1987, there is a definite deadline in the law which changes the situation, in my view. In view of that deadline it would be the opinion of this member of the committee that regardless of the merit of everything you've proposed to do, that there is no legal basis on which you can do it. That seems to reflect somewhat on this Congress for not having provided the legal basis for going forward further at the present time.

Following along on that, while it is obvious that you do have a great deal of authority, I think it's fairly clear—at least it is to this committee and its professional staff—that to tighten the tailpipe standards for cars and trucks does require an amendment of the Clean Air Act and that only the Congress is empowered to enact that amendment.

In August I wrote to every nonattainment area in this country to ask whether attainment of the law on maintenance standards would require tougher controls on cars and trucks. Most of these areas responded yes. Perhaps the clearest statement came from Las Vegas where the Air Pollution Control Director said:

> We will never reach attainment of the standard unless there is further tightening of the mobile source provisions of the Federal law.

There were similar answers from New Jersey; New York City; California; Illinois; Kansas; Tampa, Florida; Dayton, Ohio; and a number of California cities, including Los Angeles.

So my question here is, do you agree with your counterparts in those States and cities that tighter truck and car standards are necessary? And if not, how do you propose to obtain these pollution reductions you've suggested?

Mr. THOMAS. Senator, first, we have the authority to move forward with tighter tailpipe standards under the existing law, have done so and will do so. As a matter of fact, we have proposed tighter tailpipe standards—for instance, carbon monoxide as related to trucks—we currently have an effort underway. I've imposed tighter standards since I've been Administrator.

So we intend to deal with that and I think we will continue to deal with it in the future. I don't think we need additional authority in order to do that. Clearly, though, what has to be recognized is that we have dealt with the majority of the pollution that can be dealt with through tighter tailpipe standards. We've controlled the 90 percent of the uncontrolled level as far as hydrocarbons are concerned from tailpipes, just taking that one as an example. Therefore, tighter tailpipe standards, although it may be something that we want to go forward with in some of these areas, are not going to get us a hell of a lot as far as pollution reduction is concerned.

Take that one, for example. If we went forward with a hydrocarbon standard that's specified in your legislation for cars, it would probably be one that would be imposed along about the 1991 or 1992 model year on new vehicles. It takes about 10 years for full vehicle fleet turnover, so to get full benefit from it, it would be around 2002. It would be less than a one percent reduction of the hydrocarbon emissions in this country.

Now, that may be something we need to look at, but it certainly isn't the first thing I'm looking at. For instance, I've got a gasoline volatility rule on the street right now where I can get about an eight percent reduction in hydrocarbon emissions and I can get them by 1992 as opposed to starting them in 1992, as I would with tailpipes.

Now, you say, well, you've got to look at all those things. I agree with you; you've got to look at all those things. But we have the best motor vehicle pollution control program in the world. The world looks to our program. We have gotten tremendous benefit from it and will continue to get tremendous benefit from it in this country because it still has had an impact. But we've gotten most of what's out there. We're going to have to focus, I think, as far as mobile sources are concerned on a couple of other things. One is, I think we've got to focus on where we let all those cars go. As far as carbon monoxide is concerned, clearly we've got some hot spot problems in some cities. We've got some bigger problems in some other cities, and we've got to focus on how many vehicles go into those areas.

The second thing is, I think we've got to focus on alternate fuels. We've got a guidance package on the street now dealing with methanol and ethanol. I think alternate fuels have the potential for having a lot of payoff, particularly for ozone, particularly as it relates to methanol, as something to be looked at hard.

So looking at fuels, looking at numbers of cars, continuing to look at tailpipe standards but don't think there's any magic there because there isn't—that's the way I think we need to move forward with mobile sources.

Senator STAFFORD. Looking at your testimony simply from a matter of the age of the Senator from Vermont, something that you can do by 1992 looks more attractive than something you can do in the year 2001.

I might not be here to see whether you did it or not.

This committee has tried to understand the situation that existed in 1982 when many areas of the country were supposed to have attained healthier air standards for ozone and carbon monoxide. We tried to understand which areas were supposed to meet that dead-

line and didn't. We sought to find out what has been required in those areas from 1982 up to present. The information we've received from your agency to date has been incomplete.

My questions to you on this issue are these. Is it possible to identify with confidence the areas that projected ozone and CO attainment by 1982 but failed to meet that deadline?

Mr. THOMAS. Senator, first, if the information that has been submitted is incomplete, if your staff will just identify what's incomplete we'll work hard to get you everything you don't have. Just give it to us in writing and we'll give it back to you in writing as quick as we can.

The second thing is, we basically know those areas that were not in attainment by 1982. We certainly can give you that list. We can give you the list of those areas that we went out for SIP calls on after 1982. Most of that was done in late 1983 or 1984. We didn't do every one of those areas. Generally, we did them above about a .14 cutoff as far as ozone is concerned, looking at those that we did not think were going to attain without further work.

We can give you that list. We can give you the list of those that were supposed to attain by 1987 and that we don't think are going to attain. Clearly, though, we won't know for a fact what happened on that, on ozone particularly or even CO, until later in the year. As you know, on ozone we do three-year averaging, so we'll want to look at 1985, 1986 and 1987 data before we give you the final figures on what cities didn't attain the 1987 date. We've got projections right now; clearly, those projections are pretty close. We can firm that up for you, probably in early summer because March is when the data comes in on 1987.

Senator STAFFORD. Would you be able to supply the committee with any current projections on this matter at the present time?

Mr. THOMAS. Sure. We've got projections. I've got about 60 cities estimated that are not going to make the ozone standard; a little more than that are not going to make the CO standard. I think when you look at duplication between the two it's a little over 100 cities that we're looking at.

There's a difference between CO and ozone as far as the difficulty of the solution is concerned. Mayor Pena is wrong about the agency not considering CO a difficult issue and an issue that needs to be addressed. That perception comes from the fact that we believe CO will be dealt with in the majority of those cities over the next five to ten years through fleet turnover with the tighter pollution control equipment that's on new cars.

As opposed to some of the more difficult issues that we see with ozone, maintenance for CO is a long-term problem that we're focusing on. We can give you projections and then we can update those projections after the spring of the year.

Senator STAFFORD. I think that would be helpful to the committee if you could supply us the projections at your early convenience——

Mr. THOMAS. We'll be glad to.

Senator STAFFORD [continuing]. And we'll make them part of the record.

[The information referred to follows:]

QUESTION: Is it possible to identify with confidence the areas that projected ozone and carbon monoxide attainment by 1982 but failed to meet that deadline?

ANSWER:

Areas that projected attainment by 1982 but failed to meet that deadline were subject to calls for SIP revisions. The areas which received SIP calls for ozone and carbon monoxide are listed below:

SIP CALLS
(BY POLLUTANTS)

Pollutant	Region	State	Area	Date	Notes
Ozone	III	PA	Scranton/Wilkes-Barre	2/24/84	
		VA	Richmond	9/28/84	
	IV	AL	Jefferson Co.	2/24/84	
		FL	Dade Co.	2/24/84	
			Broward Co.	2/24/84	
			Palm Beach Co.	2/24/84	
		GA	Atlanta Metro. Area	2/24/84	
		TN	Memphis	9/28/84	
	V	OH	Portage Co.	2/24/84	
			Summit Co.	2/24/84	
	VI	LA	Baton Rouge	2/24/84	
		OK	Tulsa	2/24/84	
		TX	Dallas Co.	2/24/84	
			El Paso Co.	2/24/84	
			Tarrant Co.	2/24/84	
			Denton Co.	10/5/84	
	VII	MO	Kansas City	2/20/85	
		KS	Kansas City	2/20/85	
	IX	AZ	Maricopa Co.	2/24/84	
		CA	Kern Co.	2/24/84	
			Ventura Co.	3/17/86	
			Santa Barbara Co.	3/17/86	
		NV	Clark Co.	2/24/84	

Pollutant	Region	State	Area	Date	Notes
Carbon Monoxide	IV	FL	Miami	9/18/84	State-initiated SIP call
		NC	Raleigh-Durham	9/18/84	State-initiated SIP call
	V	IN	Marion Co.	2/24/84	
		MN	Ramsey Co.	2/24/87	
	VI	LA	Orleans Parish	10/5/84	
		OK	Oklahoma City	10/5/84	
		TX	El Paso Co. Harris Co.	2/27/84 10/5/84	
	VII	KS	Wichita	2/29/84	
	VIII	CO	Greeley	10/6/86	
		UT	Provo	12/19/84	

It should be noted that not all areas violating the standards received SIP calls. Those that only marginally violated the standard did not receive SIP calls because the Agency felt that ongoing programs, particularly the Federal Motor Vehicle Control Program, would soon bring these areas into attainment without the implementation of additional control measures. These "cutpoints" were 0.14 ppm for ozone and 10 ppm for carbon monoxide, compared to the standards of 0.12 ppm and 9 ppm respectively.

QUESTION: And is it possible to identify which of these areas will not attain standards in 1987?

ANSWER:

Appendix A of the November 24, 1987, Federal Register notice proposing the post-1987 ozone and carbon monoxide policy listed those areas likely not to attain the standards by the end of 1987 and indicate that EPA intends to issue a post-1987 SIP call to each of them that do not, in fact, attain the standards. Many of the areas listed in the previous response are on that list and are listed below.

POLLUTANT	REGION	STATE	AREA
Ozone	III	VA	Richmond
	IV	AL	Jefferson Co.
		FL	Dade Co. Broward Co. Palm Beach Co.
		GA	Atlanta Metro. Area
		TN	Memphis
	V	OH	Portage Co. Summit Co.
	VI	LA	Baton Rouge
		OK	Tulsa
		TX	Dallas Co. El Paso Co. Tarrant Co. Denton Co.
	VII	MO	Kansas City
		KS	Kansas City
	IX	AZ	Maricopa Co.
		CA	Kern Co. Ventura Co. Santa Barbara Co.
		NV	Clark Co.

POLLUTANT	REGION	STATE	AREA
Carbon Monoxide	IV	FL	Miami
		NC	Raleigh-Durham
	V	MN	Ramsey Co.
	VI	OK	Oklahoma City
		TX	El Paso Co. Harris Co.
	VII	KS	Wichita
		NB	Lincoln
	VIII	CO	Greeley
		UT	Provo

Appendix A.—Potential 1988 SIP Call Areas

TABLE A-1.—POTENTIAL 1988 SIP CALL AREAS—OZONE

EPA region and area	Exceeding NAAQS 1983-86	Will exceed NAAQS 1985-87	May exceed in 1985-87, depending on 1987 data
	(a)	(b)	(c)
Metropolitan Statistical Areas (MSA unless marked CMSA)			
I. Boston, MA CMSA			
I. Connecticut/Massachusetts * CT-MA	YES	YES	
I. New Bedford, MA	YES	YES	
I. Portland, ME	YES	YES	
I. Portsmouth-Dover, NH-ME	YES	YES	
I. Providence, RI CMSA	YES	YES	
I. Worcester, MA	YES	YES	
II. Atlantic City, NJ	YES		YES
II. New York, NY CMSA	YES	YES	
III. Allentown-Bethlehem, PA	YES	YES	
III. Baltimore, MD	YES		YES
III. Charleston, WV	YES	YES	
III. Erie, PA			YES
III. Harrisburg, PA			YES
III. Lancaster, PA			YES
III. Philadelphia, PA-NJ-DE CMSA			YES
III. Pittsburgh, PA CMSA	YES	YES	
III. Reading, PA			YES
III. Richmond, VA			YES
III. Washington, DC-MD-VA			YES
III. York, PA	YES	YES	
IV. Atlanta,* GA			YES
IV. Birmingham, AL	YES	YES	
IV. Charlotte, NC-SC	YES	YES	
IV. Huntington, WV-KY-OH	YES	YES	
IV. Jacksonville, FL	YES	YES	
IV. Lexington, KY	YES		YES
IV. Louisville,* KY-IN suburbs [1]	YES	YES	
IV. Memphis, TN-AR-MS	YES	YES	
IV. Miami-Hialeah, FL CMSA	YES	YES	
IV. Nashville, TN *	YES	YES	
IV. Tampa, FL	YES	YES	
V. Chicago,* IL CMSA [IN suburbs 1]	YES		YES
V. Cincinnati, OH-KY-IN	YES	YES	
V. Cleveland, OH	YES		YES
V. Dayton-Springfield, OH	YES		YES
V. Detroit, MI CMSA			YES
V. Grand Rapids, MI			YES
V. Indianapolis, IN			YES
V. Janesville-Beloit, WI	YES		YES
V. Milwaukee, WI			YES
V. Muskegon, MI	YES	YES	
VI. Baton Rouge, LA	YES	YES	
VI. Beaumont-Port Arthur, TX	YES	YES	
VI. Dallas-Ft. Worth,* TX CMSA	YES	YES	
VI. El Paso, TX	YES	YES	
VI. Houston, TX CMSA	YES	YES	
VI. Lake Charles, LA	YES	YES	
VI. Longview-Marshall, TX	YES		YES
VI. Tulsa, OK	YES		YES
VII. Kansas City, MO-KS	YES	YES	
VII. St. Louis, MO-IL CMSA [IL suburbs 1]	YES		YES
VIII. Denver-Boulder, CO-LA, SA	YES	YES	
VIII. Salt Lake City, UT	YES		YES
IX. Bakersfield, CA	YES	YES	
	YES	YES	

TABLE A-1.—POTENTIAL 1988 SIP CALL AREAS—OZONE—Continued

EPA region and area	Exceeding NAAQS 1984-86 (a)	Will exceed NAAQS 1985-87 (b)	May exceed in 1985-87, depending on 1987 data (c)
IX Fresno,[2] CA	YES	YES	
IX Los Angeles,[2] CA CMSA (Ventura [2])	YES	YES	
IX Modesto, CA	YES	YES	
IX Phoenix, AZ	YES	YES	
IX Sacramento,[2] CA	YES	YES	
IX San Diego, CA	YES	YES	
IX San Francisco, CA CMSA	YES	YES	
IX Santa Barbara, CA	YES		YES
IX Stockton, CA	YES	YES	
IX Visalia, CA	YES	YES	
IX Yuba City, CA	YES	YES	
X Portland, OR-WA	YES		YES
Non-MSA's			
I Acadia National Park, ME			YES
I Gardiner, ME	YES		YES
I Hancock County, ME	YES		YES
I Knox County, ME	YES	YES	
I York County, ME	YES	YES	
III Dover, DE			YES
III Northampton County, VA			YES
III Seaford, DE			YES
VI Iberville Parish, LA	YES	YES	
VI Point Coupee Parish, LA	YES		
VI St. James Parish, LA	YES		
Total	62	45	31

[1] Connecticut/Massachussetts includes Bristol, Hartford, Middletown, New Britain, New Haven, and New London, CT, and Springfield, MA MSA's.

[2] One of 14 ozone or CO SIP's proposed for disapproval, July 14, 1987 (52 FR 26404).

Explanation of Column Headings:

(a) Locations having expected exceedances of 0.12 ppm greater than 1.0 per year during 1984-86.

(b) These areas are above 0.12 ppm and have measured more than three exceedances during 1985 and 1986. They will continue to exceed the NAAQS during the 1985-87 period even if no exceedances occur in 1987.

(c) Areas currently exceeding NAAQS and showing "YES" in this column measured 3 or fewer exceedances in last 2 years (1985-86). Other areas are not currently exceeding NAAQS, but did so during 1983-85, and may show renewed nonattainment in 1985-87. SIP calls in 1988 for areas in this column will depend on 1987 data. Other areas may also exceed in 1985-87 (see Discussion).

Table A-2.—POTENTIAL 1988 SIP CALL AREAS—CARBON MONOXIDE

EPA region and area [1]	Exceeding NAAQS 1985-86 (a)	Will exceed NAAQS 1986-87 (b)	May exceed in 1986-87, depending on 1987 data (c)
I Boston, MA	YES	YES	
I Hartford, CT	YES	YES	
I Lowell, MA-NH			YES
I Manchester, NH	YES	YES	
I Nashua, NH	YES	YES	
I Providence, RI	YES		YES
I Springfield, MA	YES	YES	
I Stamford, CT		YES	
I Worcester, MA		YES	
II Bergen-Passaic, NJ	YES	YES	
II Jersey City, NJ	YES	YES	
II Nassau-Suffolk, NY			YES
II New York, NY	YES	YES	
II Newark, NJ	YES	YES	
II Syracuse, NY	YES	YES	
II Trenton, NJ			YES

Table A-2.—Potential 1988 SIP Call Areas—Carbon Monoxide—Continued

EPA region and area [1]	Exceeding NAAQS 1985-86 (a)	Will exceed NAAQS 1986-87 (b)	May exceed in 1986-87, depending on 1987 data (c)
III Baltimore, MD	YES	YES	
III Norfolk-Virginia Beach, VA			YES
III Philadelphia, PA-NJ			YES
III Pittsburgh, PA	YES	YES	
III Washington, DC-MD-VA	YES		YES
IV Atlanta, GA			YES
IV Birmingham, AL			YES
IV Charlotte-Rock Hill, NC-SC	YES		YES
IV Greensboro-Winston-Salem, NC			YES
IV Lexington, KY			YES
IV Louisville, KY			YES
IV Memphis, TN-AR-MS	YES	YES	
IV Miami-Hialeah, FL	YES		YES
IV Nashville, TN	YES	YES	
IV Raleigh-Durham, NC	YES	YES	
V Chicago, IL			YES
V Cleveland*, OH	YES	YES	
V Davenport-Rock Island, IA-IL			YES
V Detroit, MI	YES	YES	
V Duluth, MN	YES	YES	
V Milwaukee, WI			YES
V Minneapolis/St. Paul, MN-WI	YES	YES	
V Peoria, IL			YES
V Rockford, IL			YES
V Steubenville-Weirton, OH-WV	YES		YES
V St. Cloud, MN	YES		YES
V Toledo, OH			YES
VI Albuquerque, NM	YES	YES	
VI Dallas, TX	YES		YES
VI El Paso, TX	YES	YES	
VI Houston, TX	YES	YES	
VI Oklahoma City, OK	YES	YES	
VII Des Moines, IA			YES
VII Dubuque, IA			YES
VII Kansas City, MO-KS			YES
VII Lincoln, NE	YES	YES	
VII Springfield, MO	YES	YES	
VII Wichita, KS	YES	YES	
VIII Boulder-Longmont, CO	YES		YES
VIII Colorado Springs, CO	YES	YES	
VIII Denver,* CO	YES	YES	
VIII Fort Collins, CO	YES	YES	
VIII Greeley, CO	YES	YES	
VIII Missoula, MT	YES		YES
VIII Provo-Orem, UT	YES	YES	
VIII Salt Lake City-Ogden, UT	YES	YES	
IX Anaheim-Santa Ana, CA	YES	YES	
IX Chico, CA	YES	YES	
IX Fresno,* CA	YES	YES	
IX Las Vegas, NV	YES	YES	
IX Los Angeles-Long Beach,* CA	YES	YES	
IX Modesto, CA	YES	YES	
IX Phoenix, AZ	YES	YES	
IX Reno,* NV	YES	YES	
IX Sacramento, CA (includes S. Lake Tahoe area)	YES	YES	
IX San Diego, CA	YES		YES
IX San Francisco, CA	YES	YES	
IX San Jose, CA	YES	YES	
IX Santa Barbara-Santa Maria, CA	YES		YES
IX Tucson, AZ			YES
IX Vallejo-Fairfield-Napa, CA	YES	YES	
X Anchorage, AK	YES	YES	
X Boise City, ID	YES	YES	
X Fairbanks, AK	YES	YES	
X Grants Pass, OR	YES	YES	

Table A-2.—Potential 1988 SIP Call Areas—Carbon Monoxide—Continued

EPA region and area [1]	Exceeding NAAQS 1985-86	Will exceed NAAQS 1986-87	May exceed in 1986-87, depending on 1987 data
	(a)	(b)	(c)
X Medford, OR	YES	YES	
X Portland, OR			YES
X Salem, OR	YES		YES
X Seattle, WA	YES	YES	
X Spokane, WA	YES	YES	
X Tacoma, WA	YES	YES	
X Yakima, WA	YES		YES
Total	65	52	36

[1] Generally, the area includes the MSA if one exists. In some cases (e.g., the Sacramento, CA MSA) the air quality status may be based on a site distant from the central urban area.

* One of 14 ozone or carbon monoxide SIP's proposed for disapproval July 14, 1987 (52 FR 26404).

Explanation of Column Headings:

(a) Locations with at least two exceedances of 9 ppm during 1985 and/or 1986.

(b) Areas with at least two exceedances of 9 ppm in 1986. They will continue to exceed the NAAQS during the 1985-87 period even if no exceedances occur in 1987.

(c) Areas in this column are:

1. Exceeding the NAAQS, but did not measure more than one exceedance in 1986, or

2. Not exceeding the NAAQS, but did so during 1984-85.

SIP calls in 1988 for these areas will depend on 1987 data. Other areas may also exceed NAAQS in 1986-87 (see Discussion).

QUESTION: And is it possible to identify what controls have been undertaken in these areas between 1982 and today?

ANSWER:

In general, those areas which failed to attain the standards in 1982 and which were issued notices of plan inadequacy (SIP calls) were required to submit revised plans which provided for implementation of all reasonably available control measures and additional measures needed to attain as expeditiously as practicable. A more detailed description of these requirements is contained in the "Guidance Document for Correction of Part D SIP's for Nonattainment Areas", January 27, 1984, OAQPS, and the "Final Policy - State implementation plans - areas needing an attainment date extension", January 22, 1981, 46 FR 7182 (copies enclosed). Key requirements from these policies are summarized below.

Mobile Sources

All reasonably available transportation control measures (TCMs), as identified in Section 108 of the Clean Air Act, were required to be implemented unless shown to be impracticable or ineffective. A vehicle inspection and maintenance (I/M) program was presumed to be required in any area if necessary to attain by 1987 and on a case-by-case basis if needed to show more expeditious attainment. EPA presumed that ozone SIP call areas with a design value above 0.150 ppm would need the full I/M program required for areas that had initially received extensions of the attainent date to 1987. Otherwise, for ozone SIP call areas at or below 0.150 ppm and for carbon monoxide SIP call areas, EPA expected States to consider at least a less stringent mobile source emission control program which might have included change-of-ownership I/M, anti-tampering, or anti-misfueling programs.

Existing Stationary Sources

For ozone areas, reasonably available control technology (RACT) was required on all applicable sources of volatile organic compounds (VOC) in each control techniques guidelines (CTG) category (Groups I, II, and III). RACT was also required on all non-CTG VOC sources with the potential to emit 100 tons per year (tpy) and on all carbon monoxide sources with the potential to emit more than 1000 tpy. RACT is determined for these sources on a case-by-case basis. Additional stationary source measures were required if necessary to attain by 1987.

New Stationary Sources

A level of control representing lowest achievable emission rate (LAER) technology and either offsets or an accomodative SIP were required for new major sources or major modifications to major sources of VOC or CO.

Areas which did not attain the ozone or carbon monoxide NAAQS by 1982 and received SIP calls, and have not received EPA approval of their post-1982 SIP revision, would not receive credit against the 3% reduction requirement under EPA's proposed policy for implementation of previously required measures. In addition, where EPA finds that areas have not adequately revised their SIP in response to post-1982 SIP calls, including failure to demonstrate attainment by a near-term fixed date, the Agency would take action to propose disapproval of SIP revisions submitted by these areas and propose the imposition of the construction ban under section 173(4) of the Clean Air Act. This step was already proposed in the cases of Atlanta and Dallas-Fort Worth in July, 1987 (52 FR 26435, 26421, July 14, 1987). Any further action on thsoe rule-makings would, of course, have to be consistent with the restriction in the recently-enacted continuing resolution (P.L. 100-202) which limits EPA's ability to impose the construction ban for failure to submit or implement a plan under the Act prior to the end of August 1988.

EPA does not have a centralized, detailed analysis available at this time of which mobile or stationary source controls have been implemented in these areas since 1982. This information is being compiled and will be made available to the Committee when it is completed.

Senator STAFFORD. If you could add to that what the areas in question may have done between 1982 and 1987 in their efforts to reach compliance——

Mr. THOMAS. Sure. We'd be glad to. And that will include, for instance, both the things that they incorporated into their new SIP's as well as what they implemented that was in those new SIP's, and that may be two different things. We have what was in the plan, and then we have what they implemented. We are in fact going through noninplementation reviews in all States right now.

Senator STAFFORD. Mr. Thomas, under the EPA's proposed ozone and CO tactic, what additional controls—if any—will be required in nonattainment areas prior to EPA approval of SIP's in 1991 or 1992?

Mr. THOMAS. Well, what the policy talks about is a couple of things. One, it says that we want continued implementation toward attainment, and the three percent we talk about begins next year. So in the plan that's submitted to us, that plan is going to have to incorporate a three percent annual reduction beginning this coming January; that's when you start that. And that's net growth. If the States want to do more than that, clearly they can do more than that, but at least that has to be incorporated.

So in that plan that comes in over the next two years—that's the kind of time frame we've laid out for the plan to be developed—you're going to see that the States have to do a number of things. One is, in about a year they're going to have to update their emissions inventory. In that process they're going to be identifying additional sources that need to be controlled; that's where they're going to be looking at their three percent, how they're going to get that. They're going to have to go forward and implement all the measures they've committed to in the past but have not yet implemented. That includes, for instance, all CTG's that have not been implemented. They're going to have to go forward then and incorporate these new measures into the plan that comes in that would have to be implemented.

Basically, what they're going to be looking at is new measures beyond those that have already been required. Additionally, any new EPA RACT requirements—Reasonably Available Control Technology requirements—during that period of time would have to be incorporated. For instance, one of the ones we're looking at is a new requirement for an enhanced inspection and maintenance program. If that goes out, that would have to be incorporated just as the current CTG's or current requirements for RACT would be incorporated and implemented in any area. And there are several others that we're looking at, as well. Those things have to be incorporated.

Senator STAFFORD. All right.

This Senator may also have a question or two in writing, but I think we'll stop here.

For the committee, let me express our several appreciation to you for being with us this afternoon, and we'll go on from here. Thank you very much, Mr. Thomas.

Mr. THOMAS. Thank you, Senator.

Senator STAFFORD. In the interest of time, there is a very distinguished panel that will be coming to the witness table. We would

ask them to do so now: Mr. Thomas Jorling, Commissioner, New York State Department of Environmental Conservation; Mr. Kenneth . Alkema, Director, Division of Environmental Health of Salt Lake City, Utah; and Mr. Richard Dewling, Commissioner, New Jersey Department of Environmental Protection, Trenton, New Jersey.

Gentlemen, we welcome you here. We appreciate your willingness to join us in this difficult position that we're all in.

I believe you have been asked to limit your oral testimony to five minutes, and due to the hour the Chair would appreciate it if you can do that. Your full statements will be placed in the record. It would be our intention to start with Mr. Jorling, then Mr. Alkema, and then Mr. Dewling. And if somebody does it in two minutes, we'll give them the Calvin Coolidge Award for Brevity.

Mr. Jorling?

STATEMENT OF THOMAS C. JORLING, COMMISSIONER, NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Mr. JORLING. Thank you, Mr. Chairman. It's a distinct pleasure to be back here in the committee room and I do want to initiate my remarks by expressing appreciation to the committee for affording several States the opportunity to appear here to react to the ozone policy announced by the EPA last month, especially Senator Moynihan and his staff for making this room available.

Mr. Chairman, I'm not going to read my statement. In addition to the statement I do have additional material to submit for the record which I think will be helpful to the committee at this time. One item is a copy of the petition that the State of New York served on the EPA to act under what we believe its authority under Section 126 should be to commence controls on the interstate transport of ozone problems.

In addition I would like to submit—and I suspect each of us here would like to submit—the agreement between the northeastern States which will reduce reed vapor pressure during the summer months commencing this summer in a staged way, well in advance of the EPA requirements.

Senator STAFFORD. Without objection, we will make those a part of the record by reference.

Mr. JORLING. Mr. Chairman, I think that in the interests of brevity I would certainly subscribe to the remarks of the Mayor of Denver, Mayor Pena. His recitation of the issues, I think, is accurate and we certainly subscribe to it. I especially noted his support, speaking on behalf of the National Conference of Mayors, for a short-term extension.

In listening to the testimony one of the things that I was struck by was that if I were sitting at the table where the press is, I would try to figure out what's being said. I could conclude that everyone agrees with everything but nobody agrees with anything. There seems to be an awful lot of agreement, but that agreement somehow masks the fact that Congress hasn't acted. Our purpose—at least, New York's purpose—in speaking here today is to say that that's the first and fundamental need, for Congress to act to put a

secure footing under the Clean Air Act program to avoid transferring this program, one, to the Executive Branch. I can't help but conclude that there seem to be two lawmaking processes underway, one in Congress and one in the Executive, and I don't think that's a healthy situation. Ultimately, that's going to result in these issues being transferred to the Federal judiciary, and that's something we want to avoid.

I would like to just mention a few things that the Administrator spoke to.

We seek a resumption of the partnership that is implicit and explicit in the Clean Air Act. We feel that that partnership has not been the characteristic of the program over the last several years, and we are in danger of losing it even more greatly in the next several years.

The statements that he made—the one that I would have hoped he would have responded to differently, when asked by the Chairman if he would support a short-term extension—the answer was no. Then he responded by saying that he thinks that the Congress could work out the ozone and CO nonattainment provisions in the short term, and it should limit itself to that.

Mr. Chairman, we hope that that will not be the case. There are other serious problems in the Clean Air Act that need to be addressed. The bill that has been reported from this committee addresses them. The bills that are being considered in the House of Representatives consider them. We think they can all be acted upon, and we endorse that.

Let no one question that there are fundamental issues of public health involved here. Millions of citizens around the country are subject to unhealthy air. The States believe that a steadfast program of controls is necessary. We feel the EPA policy promotes nonaction and then rewards it. It will contribute little to improve the quality of air, and it has the very real potential to reverse the achievements that have already been made.

The EPA action, however, misguided as it is, is taken in part in frustration, a very real frustration that we in the States feel even more acutely. It is a frustration produced by the prospect of the end of the first session of the 100th Congress, notwithstanding the leadership of this committee, without Congressional action.

I would add, because there is a great deal of confusion on what the States are doing and whether or not the States are in effect asking the Federal Government to bail them out, I don't think that's the case. There may be some States; there may be some communities which are not acting in good faith, but I can assure you that the State I'm familiar with and the States immediately around me that I'm familiar with are acting in good faith. We are, in effect, "working in the vineyards" and I would point out, for instance, that in New York we have applied the RACT controls to all the sources that are subject to CTG's. We have done that even below the threshold in the Clean Air Act of 100 tons per year and have applied those controls to 25 tons per year.

I must say it's a very difficult task for a State to go to a firm and say, "you must apply controls," when that person knows that none of the competitors that they compete with in the national marketplace are subject to those same controls. We know that, they know

that, but we are applying those controls throughout our Air Quality Control Region. We are acting to do the things that we within our authority can do, and we seek additional Federal support in order to do that.

Mr. Thomas spoke about emissions from mobile sources, basically on a national level, saying that we've extracted about as much out of that as we can. We disagree with that because it's not just a question of emission controls, although there are certain classes of mobile sources where additional controls will have significant effect, but there are other things. The Mayor pointed many of these out—the certification test needs repair. The certification test needs repair because the quality of each car that is delivered to the consumer must be of the highest quality. The idle test is insufficient. The fact is that the certification test is still premised upon fuels at nine pounds per square inch of reed vapor pressure when, in fact, the fuels that are in use throughout the country are in the neighborhood of 11 pounds per square inch.

Averaging is another matter within the certification test that is within the current authority of EPA to act on, and which they have not and which the bill that you have reported would direct them to do.

So, Mr. Chairman, I'll conclude my remarks. With me is David Wooley from the Attorney General's Office of the State of New York; he wants to speak a little bit about the law that we share, again, with most that is not supporting the EPA position.

But repeating, we seek a restoration of that partnership. We would hope that Mr. Thomas 'views expressed here are that he will submit a proposal to this committee—perhaps it's past that time, but would have submitted a proposal to play in the game of enacting legislation. That's our objective. We seek it. If it's necessary to get that in the early days of the second session, we would support a very short-term extension. We think an extension that takes us to July 1st would be adequate for that task.

Thank you, Mr. Chairman.

Senator STAFFORD. Would you identify yourself for the record, please?

STATEMENT OF DAVID WOOLEY, ASSISTANT ATTORNEY GENERAL, STATE OF NEW YORK

Mr. WOOLEY. I am David Wooley, Assistant Attorney General for the State of New York.

Thank you, Senator. I am here on behalf of Attorney General Robert Abrams of New York. We appreciate the opportunity to address the subject matter before this subcommittee.

Attorney General Abrams asked me to express his very strongly-held belief that Congress must enact new, comprehensive Clean Air Act legislation. The EPA's new nonattainment policy is fresh evidence that the existing law is no longer a viable tool for the improvement of air quality.

Enactment of a bill such as that which has been approved by this committee is needed to breathe new life into this Nation's commitment to clean air and a healthy environment.

Our office has been involved for nearly 8 years now, very deeply, in the air policy debate in this country, not only before this committee but in the courts of the State and the Federal courts. It is painfully apparent to us that we are about to enter a period of legal chaos involving a burgeoning amount of litigation, stagnation of air quality, and the number of interstate inequities.

In short, the nonattainment problem has outlived the cure prescribed for it by Congress in 1977. The Act presumes that the standards would be met by now and provides no guidepost for what shall happen after the deadline.

The Ninth Circuit case has already been discussed a great deal, but let me just point out that the bottom line in that case is that EPA must disapprove plans which do not provide for attainment by the 1987 deadline. The effect is to bring on sanctions and possible Federal takeover of state air pollution programs. The court instructed EPA to "face up to implementing measures which are triggered by failure to meet attainment deadlines." A similar result is likely to occur in the post-attainment deadline period.

The EPA policy flatly contradicts the Ninth Circuit case. It is unlikely to survive the lawsuits which we are going to see filed against it. In the meantime, the States will be embroiled in much litigation brought against them by owners of pollution sources to try to stop their efforts to control. The affected industries will take advantage of the confusion in the Federal law. In addition, the northeastern States feel they have no option but to try to go to the courts to get some control on the interstate ozone pollution problem that we face.

Let me just spend one minute on the interstate problem. EPA has historically failed to recognize that ozone, like a lot of our other air pollution problems in this country, are interstate in nature. New York's ability to attain the ozone standard is very much affected by pollution outside of our jurisdiction.

EPA's policy pays lip service to the problem, but when you look at it closely you will see that there are large areas of the midwest, the mid-Appalachian States, the southern [illegible] some the mid-Atlantic States, which are only going to be required to do very minor tightening of their SIP's, without any major new programs. This is not going to solve the regional ozone problem in the northeast.

Mobile sources—again, EPA refuses to go forward with the obviously-available new car emission reductions that it could achieve.

There is reference in the EPA Policy to coordination with air toxics policy, and this I find particularly difficult to understand. It's fairly obvious that EPA's air toxics program is a complete disaster. We've been in court for years trying to get them to go beyond the handful of pollutants they have controlled.

EPA's failure to carry out the Clean Air Act also extends to the international section, the visibility section, the tall stack section—all have not been implemented properly by EPA. EPA has also perverted the process for setting national standards. Even though the statutes very clearly say you must take into account all the effects of pollutants, EPA has refused to look at acid rain effects when it revises the national standards for particulates and sulfur dioxide.

Senator STAFFORD. Mr. Witness, can you summarize now in about 30 seconds?

Mr. WOOLEY. Just one last point.

All these issues—acid rain, ozone nonattainment, even the global warming problem—are related. We hope the Congress would reject the suggestion that it enact a bill limited just to the nonattainment program.

The bill that was passed by this committee is excellent and we intend to continue to work hard to see it passed.

Senator STAFFORD. Thank you very much.

Now, Mr. Alkema, we'd be glad to hear from you.

STATEMENT OF KENNETH L. ALKEMA, DIRECTOR, DIVISION OF ENVIRONMENTAL HEALTH, UTAH DEPARTMENT OF HEALTH, SALT LAKE CITY, UT

Mr. ALKEMA. Thank you, Mr. Chairman. It's a real honor and a privilege for me to be able to speak to you. My name is Ken Alkema; I'm the Director, Division of Environmental Health for Utah. Also, Commissioner Dewling and I are representing the National Governors Association in our presentation. I will try to highlight part of our written comments, and Commissioner Dewling will also highlight some additional parts of it. We don't plan to read it in detail.

I really am encouraged and would encourage the Senate to continue its action in reauthorizing the Clean Air Act. Any policy that might significantly delay that action would be a detriment. It is important that that Act be reauthorized and I would encourage that that be done.

We shouldn't leave the ozone issue by default to the Environmental Protection Agency. Although I understand and appreciate Mr. Thomas' need to try to fill the gap, I don't think that would be appropriate.

Any policy that would imply that these important issues can be dealt with short of congressional action is flawed. In fact, that would work against the goals it is designed to achieve. Anything that hinders or gives a false sense of security, that may cause Congress to act slower, is also inappropriate.

It is important that we have a long-range solution to ozone and carbon monoxide nonattainment and that that policy be put in place by the Congress.

We have been willing to work and continue to be willing to work with the Congress and the Environmental Protection Agency in developing not only a legislative fix, but also a stopgap fix if that is what is necessary, given the amount of time left in this part of the session and going into the next session. In fact, you may be aware that we met with Mr. Thomas and members of the Environmental Protection Agency in September on a preliminary draft of this policy. We sat down at that time and explained to him our position, which is still the same, that the EPA proposal cannot substitute for congressional action. There is a need for congressional action. We would be willing to sit down with him and discuss this, as well as the other proposals that both the Senate and the House have been working on, in light of a legislative fix and come up with a compromise position, whatever it may be, and support that to see it gets

since We have expressed a willingness to sit down with them and work on the stopgap fix that may be needed in the interim.

I think I have highlighted the most important part of my testimony, which is that a congressional fix is needed and the EPA policy position would only tend to delay that action. Therefore, it should be withdrawn.

I would also like to add some specific comments, if I may, in support of what Commissioner Jorling and Mayor Pena have said. We are concerned as well about the legal implications and whether or not the Environmental Protection Agency proposal is legal. It leaves not so much the Environmental Protection Agency hanging out, but the States and local governments hanging out. Therefore we highly support the need to have the congressional action rather than leaving us hanging.

I would also add to that control of ozone and carbon monoxide involve a dual role, as has been indicated by a number of people at the local, State and Federal level. We think, however, that this policy—and if I may, I'd like to read some of the specifics on that—the proposal only promises that at some time in the future EPA will develop an ozone transport model—excuse me, I'm a little ahead of myself.

EPA will develop an ozone transport model that will require affected States to submit yet another State plan. In the meantime, many States will remain under the construction ban, despite adopting significant additional controls because the air entering these States already violates the ozone standards.

The Governors have recommended that EPA define and adopt reasonably-available control technologies for things like consumer solvents, architectural coatings, cold start of automobiles, additional control technology guidance documents, and other things that would involve mobile source emissions. We think that those are mandatory if we're to continue in our goal in trying to achieve the standards in the time frame that's been set.

EPA by not doing this deprives the States of the tools that would allow us to do a much more effective job of controlling pollution and subjects us to battles in our legislatures against the specter of interstate inconsistency and industrial flight to pollution havens. While the States are willing to take their share of the tough ones, we don't believe EPA should vacate the field and leave us to fight all the battles alone.

One last point I'd like to make, if I may, is also that any policy or legislative proposal—we in Utah feel strongly on this issue—needs to take into account the severity of the problem in each area. In Utah, for example, we exceed the standard—and probably will continue to do that—with a design standard of about .16 parts per million, which is about 33 percent over the standard. However, we only exceeded that standard in the last three years; the total amount of time has been 24 hours. I feel strongly that any policy in any legislative proposal on this should take into account the severity of the problem and provide the tools and direction based on that severity for taking care of it.

In closing I'd just like to comment again, Mr. Chairman, on the need for and urge the Congress and the Senate to take quick action to reauthorize the Clean Air Act.

Thank you.

Senator STAFFORD. Thank you very much, Mr. Alkema.

Now, Mr. Dewling, we'd be glad to hear from you.

STATEMENT OF RICHARD DEWLING, COMMISSIONER, NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, REPRESENTING THE NATIONAL GOVERNORS ASSOCIATION

Mr. DEWLING. Senator, thank you. I'll be brief. We are submitting our full testimony for the record.

I think through no fault of its own, EPA is offering a triage approach to solving a problem that needs more significant corrective action. We must go down parallel paths moving at the same speed, and our position right now is that we don't see that on the EPA side.

Going back to the Clean Air Act when it first came out and we had to look at the impact of air pollutants at the source, which we correctly did, it worked. It worked for sulfur oxides. It worked for particulates on a State-by-State boundary issue. It no longer works. It did not work for acid rain; it is not going to work for issues for which we have transport, such as ozone.

The good Senator from Connecticut talked about how if he shuts down everything in the State, he still violates the ozone standard. He can thank New Jersey and New York for that problem. But if we also shut down everything in the State of New York and the State of New Jersey, we also violate the ambient standard. So that means we can never attain the standard no matter what we do, and we would have sanctions automatically. Whatever percentage of reduction EPA gives us, there is no way for us to physically meet it.

We believe there is a legal and scientific basis today for the agency to define multi-State Air Quality Control Regions, and you can require fundamental controls on ozone precursors in those areas that interfere with attainment in downwind areas. The draft strategy by EPA does not even focus on that.

I think the best example that I can give you are standards we are now imposing in the State of New Jersey for barges that offload oil products—vapor controls from a barge. So a barge on one side of the river must have vapor controls; 500 yards away on the other side of the river in Pennsylvania, the same barge can offload without the vapor controls. The cost per gallon is going to be different and there's going to be an impact on air quality.

So all I'm saying in summary is that if we're going to focus on the issues, the transport issue for the northeast is probably the most significant issue, that the problems of sanctions are real and we believe that sanctions should be applied. But the question here is, as the Clean Air Act originally mentioned and the good Senator from Wyoming identified, we can control our sources but we are unable to control sources outside of our region. We need the Federal Government to take the necessary steps now to take those actions that will allow us to do that.

Every State in the northeast has agreed to start now, not wait for EPA, to adjust the Reed vapor pressure for gasoline. We get no

credit in our SIP for that, which in New Jersey represents 150 tons a day of VOC's. That's significant.

So what we're talking about now is, we don't need more modelling. There's a capability of making decisions now, and we're suggesting that action can be taken now. The transport issue was brought to light that about a month ago when there were a forest fire down in this area. New Jersey, New York and Connecticut were directly impacted for two days as a result of that forest fire. You don't need modelling to prove the transport issue; that proved it for us very clearly.

We do need a new Clean Air Act. We support the positions that you have listed here this morning and this afternoon, and our position is that we must move ahead as rapidly as possible. We're legally exposed out there.

Thank you.

Senator STAFFORD. Thank you, Mr. Dewling.

I want to thank you all. I'm sure members of the committee would want me to express their appreciation to you. I think you heard the reason why they're not here; the Finance Committee is trying to avoid Gramm-Rudman's application by the 19th of this month, and many members of this committee are at that meeting.

Some of the members are sure to want to submit questions in writing, gentleman. Would it be agreeable to you if it is done in that way? Would you be able to answer at your reasonable convenience?

Mr. JORLING. Most certainly.

Senator STAFFORD. All right. Since I'll be travelling through a couple of your States every now and then, I have some idea of what the air situation is in New Jersey and New York.

Mr. ALKEMA. We would invite you to Utah, Mr. Chairman, too.

Senator STAFFORD. I'm looking forward to a chance to see what it's like in Utah, too, I might say.

Well, thank you all very much on behalf of the committee. We appreciate it, and the committee will stand adjourned.

[Whereupon, at 4:02 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

[Statements submitted for the record follow:]

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TESTIMONY OF THE HONORABLE FEDERICO PEÑA

MAYOR OF DENVER, COLORADO

REPRESENTING

THE CITY AND COUNTY OF DENVER

AND

THE NATIONAL LEAGUE OF CITIES

BEFORE THE

SUBCOMMITTEE ON ENVIRONMENTAL PROTECTION

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

UNITED STATES SENATE

ON

THE EPA PROPOSAL FOR POST - 1987 ATTAINMENT ISSUES

DECEMBER 2, 1987

I COMMEND YOU, MR. CHAIRMAN, FOR INITIATING HEARINGS ON THE POST 1987 OZONE AND CARBON MONOXIDE (CO) POLICY RECENTLY PROPOSED BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA). HERE WE ARE LESS THAN ONE MONTH FROM THE OZONE AND CO DEADLINES AND APPROXIMATELY 75 METROPOLITAN AREAS WILL NOT BE IN COMPLIANCE FOR EITHER THE CO OR OZONE STANDARD, OR BOTH. THIS MEANS NEARLY 100 MILLION PEOPLE LIVE IN CITIES WITH UNHEALTHY AIR FOR AT LEAST PART OF THE TIME.

DENVER IS ONE OF THOSE CITIES. WHILE WE ARE NOT IN COMPLIANCE FOR OZONE, RECENTLY ENACTED STRATEGIES SHOULD BRING ABOUT COMPLIANCE SHORTLY. CO IS MUCH MORE PROBLEMATIC. ATTAINMENT FOR CO WILL NOT BE REACHED UNTIL THE MID-1990's, IF WE CONTINUE TO IMPLEMENT INNOVATIVE AND AGGRESSIVE STRATEGIES.

BECAUSE OF THIS, AIR POLLUTION CONTINUES TO BE A SERIOUS THREAT TO THE HEALTH OF OUR CITIZENS AND THE WELFARE OF OUR COMMUNITIES. IN DENVER, EVERY POLL TAKEN OVER THE PAST FIVE YEARS HAS INDICATED THAT AIR POLLUTION IS ONE OF THE TOP ISSUES FACING MY REGION. THE MOST RECENT POLL TAKEN BY THE DENVER POST THIS JANUARY SHOWED OVER 70% OF THE STATE POPULATION IS WILLING TO PAY MORE TO IMPROVE AIR QUALITY. IN DENVER, AIR QUALITY IS NOT ONLY A HEALTH ISSUE BUT AN ECONOMIC DEVELOPMENT ISSUE AS WELL. A RECENT POLL OF 65 FORTUNE 500 COMPANIES FOUND THAT A MAJORITY SAY DENVER'S AIR QUALITY WOULD NEGATIVELY EFFECT ANY BUSINESS LOCATION DECISIONS THEY MIGHT MAKE.

NINE MONTHS AGO, I TESTIFIED BEFORE YOU REGARDING ATTAINMENT ISSUES AND OUTLINED FOR YOU MY THOUGHT ABOUT HOW TO ENSURE COMPLIANCE IN A FAIR, EQUITABLE AND TIMELY MANNER.

TODAY, I AM HERE TO OUTLINE FOR YOU MY THOUGHTS ABOUT EPA'S PROPOSED POST-1987 POLICY. FIRST, LET ME SAY THAT MR. THOMAS AND THE AGENCY ARE TO BE COMMENDED FOR RECOGNIZING THE NEED FOR DEVELOPMENT OF A POST-1987 POLICY.

EPA HAS PROPOSED A FLEXIBLE TIMETABLE FOR CITIES TO MEET THE CLEAN AIR STANDARDS BASED ON THE SEVERITY OF THE LOCAL POLLUTION PROBLEM. THIS FRAMEWORK IS GENERALLY CONSISTENT WITH MY PROPOSALS NINE MONTHS AGO AND OF THE TWO PRIMARY BILLS IN CONGRESS, THE ONE YOU ARE SPONSORING, SENATOR MITCHELL, AND THE ONE SPONSORED BY REPRESENTATIVE WAXMAN.

THE EPA ALSO PROPOSES THAT ALL NON-ATTAINMENT CITIES ACT QUICKLY TO IMPLEMENT ALL THE STRATEGIES CONTAINED IN THEIR 1982 STATE IMPLEMENTATION PLANS (SIP). I AGREE THAT CITIES SHOULD IMPLEMENT STRATEGIES WHICH THEY PREVIOUSLY COMMITTED TO ENACT. THIS IS ALSO CONSISTENT WITH THE MITCHELL AND WAXMAN BILLS.

NORMALLY, AS MAYOR OF A CITY WITH ONE OF THE WORST POLLUTION PROBLEMS, I WOULD BE HERE TO SUPPORT EPA'S PROPOSED POLICY. THIS POLICY WOULD LET DENVER OFF THE HOOK UNTIL THE YEAR 2005 WITH NO THREAT OF THE LOSS OF FEDERAL FUNDS. I MAY BE COMMITTING HERESY HERE TODAY BUT IN SPITE OF THE POSITIVE EPA PROVISIONS, I CANNOT, ON BALANCE, SUPPORT THE EPA PROPOSED POLICY.

THE FIRST CONCERN I HAVE ABOUT EPA'S POLICY IS THAT IT IS INCONSISTENT WITH THE FEDERAL LAW. I DO NOT BELIEVE THAT EPA HAS THE AUTHORITY TO IMPLEMENT A POST-1987 SANCTIONS AND DEADLINES POLICY WITHOUT SPECIFIC AUTHORIZATION FROM THE CONGRESS. I AM NOT ALONE IN EXPRESSING CONCERN ABOUT THIS POLICY. A RECENT DECISION BY THE 9TH CIRCUIT COURT OF APPEALS IN CALIFORNIA STRUCK DOWN A SIMILAR POLICY, THE "REASONABLE EXTRA EFFORTS PROGRAM" (REEP). IN ABRAMOWITZ V. U.S. EPA, THE COURT FOUND "THE LANGUAGE OF THE ACT IS CLEAR AND UNAMBIGUOUS, THE EPA DOES NOT HAVE THE DISCRETION TO IGNORE THE STATUTORY DEADLINE."

THIS POST-1987 SANCTIONS AND DEADLINES POLICY PROPOSAL BY EPA WILL BE CHALLENEGED IN COURT AND WILL LIKELY BE FOUND ILLEGAL. IN THE MEANTIME, EPA WILL BE EXPECTING CITIES AND STATES TO BEGIN IMPLEMENTING THIS NEW POLICY. THIS IS NOT GOOD PUBLIC POLICY.

WE DO NOT NEED THE WATER MUDDIED BY POLICIES WHICH ARE WITHOUT FIRM LEGAL FOUNDATION. I BELIEVE THAT CITIES AND STATES NEED CLEAR DIRECTION FROM THE NATIONAL LEVEL IF WE ARE TO PROCEED IN CLEANING OUR AIR. MR. CHAIRMAN, IF WE HAVE LEARNED ANYTHING OVER THE PAST SEVENTEEN YEARS, IT IS THAT CITIES AND STATES NEED LEGALLY SOUND AND PRECISE STANDARDS TO FOLLOW.

WHY ARE WE DISCUSSING A NEW SET OF POLICIES BY EPA WHICH IS SO QUESTIONABLE? IS THIS NEW POLICY BASED ON LAW OR DOES IT RESPOND TO POLITICAL WINDS? WE HAVE ALREADY WITNESSED ENVIRONMENTAL ISSUES BEING COMPROMISED WHEN EPA HAS BEEN GUIDED BY POLITICAL CONCERNS RATHER THAN A RESOLVE TO PROTECT THE ENVIRONMENT.

IT APPEARS TO MANY THAT EPA'S EFFORT IS TO POSTPONE THE CURRENT DEADLINE FOR ATTAINMENT AND TO STOP THE MOMENTUM FOR A COMPREHENSIVE REVISION OF THE CLEAN AIR ACT. I'M BEGINNING TO BELIEVE WHAT MANY PEOPLE HAVE BEEN SAYING ABOUT THE REAGAN ADMINISTRATION'S POLICIES ON CLEAN AIR. THE LEVEL OF EFFORT MADE AT THE FEDERAL LEVEL IS DETERMINED BY THE OFFICE OF MANAGEMENT AND BUDGET RATHER THAN ACTING TO PROTECT OUR HEALTH AND ENVIRONMENT.

RESOLVING THE DEADLINE ISSUE WITHOUT ADDRESSING NEW TAILPIPE STANDARDS, CID RAIN AND AIR TOXICS WILL SET THESE ISSUES BACK SEVERAL YEARS. WE HAVE THE OPPORTUNITY NOW TO CAPITALIZE ON THE NEED TO ADDRESS THE DEADLINE ISSUE AND SIMULTANEOUSLY RESOLVE OTHER, EQUALLY IMPORTANT CLEAN AIR ISSUES. WE WILL LOSE THIS OPPORTUNITY UNDER EPAs PROPOSAL. IS THIS THE MOTIVE BEHIND THE EPA'S POLICY? I DO NOT KNOW, MR. CHAIRMAN, BUT I AM HOPEFUL THAT YOU AND THE COMMITTEE CAN SHED SOME LIGHT ON THIS MATTER.

THE SECOND OBJECTION I HAVE TO THE PROPOSED POLICY IS THAT EPA IS PROPOSING A 3% DECREASE IN CO EMISSIONS LEVELS ON AN ANNUAL BASIS. FOR DENVER THIS REQUIREMENT IS EXTREMELY LAX. IT WOULD POSTPONE OUR CO COMPLIANCE UNTIL APPROXIMATELY 2005. IT IS IRONIC THAT THIS PROPOSAL GIVES US ANOTHER SEVENTEEN YEARS TO

COMPLY WITH THE STANDARDS ESTABLISHED IN THE CLEAN AIR ACT. THIS IS IN ADDITION TO THE SEVENTEEN YEARS WE HAVE ALREADY BEEN GIVEN. WE WILL HAVE TAKEN A TOTAL OF 34 YEARS, MORE THAN ONE-THIRD OF A CENTURY, TO CLEAN OUR AIR. EPA'S POLICY IS SO LAX THAT IF DENVER CONTINUES TO IMPLEMENT STRATEGIES LIKE OXYGENATED FUELS, WOOD BURNING BANS, AND ENHANCED INSPECTION/MAINTENANCE (I/M), WE WOULD EASILY MEET EPA'S 3% STANDARD FOR THE NEXT 10 YEARS. WE WOULD NOT HAVE TO IMPLEMENT ANY NEW STRATEGIES UNTIL 1998 IN ORDER TO MEET THE 3% CO REDUCTION STANDARD. NINE MONTHS AGO, BEFORE THIS COMMITTEE, I ASKED THAT CITIES LIKE DENVER HAVE OUR FEET HELD TO THE FIRE. THIS NEW POLICY HAS PUT THE FIRE OUT.

WHILE THIS POLICY IS LAX FOR DENVER FOR CO, IT MAY NOT BE LAX FOR CITIES WHICH NEED TO MEET THE OZONE STANDARD WHICH BRINGS ME TO MY NEXT OBJECTION. I AM DISTURBED THAT THIS NEW EPA POLICY IS PRIMARILY DIRECTED AT OZONE. CO COMPLIANCE WAS ADDED AS AN AFTERTHOUGHT. OUR REGIONAL EPA OFFICE HAS TO KEEP REMINDING WASHINGTON HEADQUARTERS THAT THERE IS A CO PROBLEM THROUGHOUT AMERICA IN ADDITION TO THE OZONE PROBLEM. IN FACT, THIS IS THE T-SHIRT OUR REGIONAL OFFICE STAFF WEARS WHEN THEY COME HERE TO WASHINGTON. PLEASE ALSO NOTE THAT EPA IDENTIFIES MORE AREAS WITH CO PROBLEMS -- 88, THAN OZONE PROBLEMS -- 77. NEVERTHELESS, THE CO PROBLEM CONTINUES TO BE A SECONDARY CONCERN TO THE OZONE PROBLEM.

MY THIRD OBJECTION IS THE PROPOSED CONSTRUCTION BAN POLICY. THIS SANCTION IS TO BE IMPOSED ON CITIES NOT BECAUSE OF THEIR EFFORTS TO REACH COMPLIANCE BUT RATHER, IT IS BASED ON AN ARBITRARY POLLUTION LEVEL PICKED BY EPA. SOME CITIES ARE CLOSE TO ATTAINMENT IN SPITE OF A LACK OF ACTION ON THEIR PART, WHILE OTHER CITIES HAVE IMPLEMENTED INNOVATIVE CONTROL STRATEGIES AND REMAIN FAR FROM ATTAINMENT. AS I SAID IN MY TESTIMONY LAST TIME, I BELIEVE SANCTIONS SHOULD BE IMPOSED FOR FAILING TO TRY, NOT TRYING AND FAILING. IN SHORT, THE PROPOSED CONSTRUCTION BAN POLICY IS UNFAIR AND INEQUITABLE.

MY LAST OBJECTION IS THAT THE EPA POLICY ELIMINATES THE CURRENT PARTNERSHIP BETWEEN THE FEDERAL GOVERNMENT AND STATE AND LOCAL GOVERNMENTS. TODAY, UNDER THE CLEAN AIR ACT, THE FEDERAL GOVERNMENT PROVIDES FOR AIR QUALITY IMPROVEMENTS THROUGH REGULATIONS ON TAILPIPE EMISSIONS. THE FEDERAL GOVERNMENT HAS ALSO PROVIDED RESOURCES TO STATE AND LOCAL GOVERNMENTS TO DEVELOP STATE IMPLEMENTATION PLANS (SIPS). THE FEDERAL GOVERNMENT HAS ALSO PROVIDED DIRECTION TO STATE AND LOCAL GOVERNMENTS ON WHAT STRATEGIES ARE CONSIDERED REASONABLY AVAILABLE.

UNDER THE NEW POLICY, WE NO LONGER HAVE THAT PARTNERSHIP. EPA'S POLICY DOES NOT PROVIDE FOR ADDITIONAL TIGHTENING OF TAILPIPE STANDARDS. THE ONLY NEW CONTROL STRATEGY EPA IDENTIFIES IS ENHANCED I/M WHICH COLOARADO IDENTIFIED AS A STRATEGY TWO YEARS AGO. OUR REGIONAL OFFICE HAS TOLD LOCAL GOVERNMENTS THAT THERE WILL NOT BE ANY ADDITIONAL MONEY PROVIDED TO HELP MEET THE PLANNING AND REPORTING REQUIREMENTS. IN FACT, THEY HAVE SAID THAT WE CAN EXPECT TO CONTINUE TO RECEIVE FEWER DOLLARS IN EACH SUCCEEDING YEAR.

THIS NEW PROPOSED EPA POLICY ERODES THE FEDERAL-STATE-LOCAL GOVERNMENT PARTNERSHIP. WE NEED A CLOSER AND STRONGER PARTNERSHIP AND WE NEED MORE TOOLS TO REACH ATTAINMENT AND TO MAINTAIN STANDARDS.

HOWEVER, I AM NOT HERE JUST TO CRITICIZE, BUT ALSO TO OFFER SUGGESTIONS. IT IS CRUCIAL THAT CONGRESS AMEND THE CLEAN AIR ACT SOON SO THAT CITIES CAN GET ON WITH THE CHALLENGE OF CLEANING UP OUR AIR.

I AM GENERALLY SUPPORTIVE OF THE PROVISIONS IN THE BILL SPONSORED BY SENATOR MITCHELL. THE GROUPING OF CITIES BY THE SEVERITY OF THEIR DIRTY AIR IS AN APPROPRIATE METHOD FOR ESTABLISHING FAIR BUT FIRM ATTAINMENT DATES. CITIES WITH THE WORST PROBLEMS SHOULD BE ALLOWED THE LONGEST TIME TO REACH ATTAINMENT. THE 5% REDUCTION SCHEDULE CALLED FOR IN THE SENATE BILL IS MORE RIGOROUS

THAN EPA'S PROPOSAL AND WOULD INSURE ATTAINMENT MORE EXPEDITIOUSLY.

IT IS CRUCIAL THAT THERE BE CONDITIONS PLACED ON CITIES RECEIVING EXTENSIONS. IN 1982, ALL CITIES RECEIVING THE EXTENSIONS TO 1987 WERE REQUIRED TO IMPLEMENT INSPECTION/MAINTENANCE PROGRAMS THE MITCHELL BILL REQUIRES THE IMPLEMENTATION OF ENHANCED I/M, CONTROLS ON FLEET VEHICLE EMISSIONS, AND THE IMPLEMENTATION OF SPECIFIC TRANSPORTATION CONTROL MEASURES (TCMS) TO OFFSET GROWTH. THE EPA PROPOSAL REQUIRES ONLY ENHANCED I/M, WHICH MANY CITIES HAVE ALREADY BEGUN TO IMPLEMENT. I STRONGLY SUPPORT THE APPROACH IN THE MITCHELL BILL.

ANY CITY WHICH FAILS TO SUBMIT A SIP, OR WHICH SUBMITS AN INADEQUATE SIP, OR FAILS TO IMPLEMENT THE SIP SHOULD BE SUBJECTED TO THE CONSTRUCTION BAN. THIS IS MORE EQUITABLE THAN EPA'S PROPOSAL. THIS IMPOSES SANCTIONS ON CITIES WHICH DO NOT TRY TO REACH ATTAINMENT.

I SUPPORT ASSISTANCE TO STATE AND LOCAL GOVERNMENTS TO DEVELOP AND IMPLEMENT THEIR PLANS. WITHOUT THIS PLANNING ASSISTANCE, STATE AND LOCAL GOVERNMENT RESOURCES WOULD BE CONSUMED ALMOST ENTIRELY ON PLANNING WITH VERY FEW RESOURCES LEFT TO BE DEVOTED TO IMPLEMENTATION. THIS PROVISION IS INCLUDED IN THE SENATE PROPOSAL.

IT IS ALSO IMPORTANT TO NOTE THAT THE CONGRESSIONAL PROPOSALS PROVIDE ADDITIONAL TOOLS FOR ATTAINMENT, IN PARTICULAR ADDITIONAL CONTROLS ON NEW CAR EMISSIONS. I WANT TO TAKE A MOMENT TO MENTION SOME OF THESE. THE CHANGES ADVOCATED BY SENATOR TIM WIRTH AND ACCEPTED BY THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS ESTABLISHING COLD START STANDARDS, HIGH ALTITUDE STANDARDS FOR LIGHT DUTY TRUCKS AND HIGH ALTITUDE IN-USE TESTING WILL HELP DENVER AND MANY OTHER CO CITIES.

THE 10 YEAR/100,000 MILE WARRANTY PROVISIONS WILL ALSO HELP. ONE

PROVISION I STILL WANT TO SEE ADDED IS LOWER CO TAILPIPE STANDARDS. I SUGGEST LOWERING THE CURRENT 3.4 GRAMS/MILE STANDARD TO 1.5 - 2.0 GRAMS/MILE. IF THIS IS DONE WE WILL CONTINUE TO EXPERIENCE BENEFITS FROM THE FEDERAL MOTOR VEHICLE CONTROL PROGRAM INTO THE NEXT CENTURY.

PASSAGE OF THE SENATE PROPOSAL WOULD GO WELL BEYOND THE EPA PROPOSED POLICY. IN ADDITION TO RECEIVING MORE TIME TO REACH ATTAINMENT, CITIES ARE GIVEN MORE CONTROL STRATEGIES WHICH WILL HELP US REACH ATTAINMENT. IN ADDITION, WE WILL BE STANDING ON A FIRM LEGAL FOUNDATION.

WHERE DO WE GO FROM HERE? IT IS CLEAR THAT A FINAL BILL WILL NOT PASS THE SENATE AND THE HOUSE BEFORE THE END OF THIS MONTH. AN EXTENSION OF THE DECEMBER 31 DEADLINE IS NECESSARY IN ORDER TO ALLOW CONGRESS SUFFICIENT TIME TO ACT, WHILE KEEPING THE ISSUE OUT OF THE COURTS. I OPPOSE THE 2 YEAR EXTENSION AND WOULD SUPPORT A SIX TO EIGHT MONTH EXTENSION WHICH WOULD ALLOW SUFFICIENT TIME FOR CONGRESS TO COMPLETE ITS WORK BEFORE NEXT SUMMER'S RECESS. UNDER NO CIRCUMSTANCES WOULD I SUPPORT AN EXTENSION WHICH WOULD CARRY OVER TO THE 101ST CONGRESS.

ONCE THE EXTENSION IS PASSED, WE CAN FOCUS ON PASSAGE OF FINAL LEGISLATION BEFORE NEXT SUMMER'S RECESS. FAST, STRONG ACTION BY THE SENATE IS NEEDED SO WE CAN BE IN A STRONG POSITION TO PASS A SOLID BILL IN THE HOUSE. I LOOK FORWARD TO WORKING WITH YOU ON THIS IMPORTANT LEGISLATION. THE CLEAN AIR ACT IS VITAL TO THE HEALTH AND WELFARE OF DENVER RESIDENTS AND PEOPLE THROUGHOUT THE UNITED STATES. THANK YOU MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE.

TESTIMONY OF

THOMAS C. JORLING
COMMISSIONER
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

BEFORE THE

SUBCOMMITTEE ON ENVIRONMENTAL PROTECTION

DECEMBER 2, 1987

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE.

I APPRECIATE THE OPPORTUNITY TO TESTIFY TODAY REGARDING PROPOSED CHANGES BY EPA TO THE CLEAN AIR ACT ATTAINMENT DEADLINES. HOWEVER, BEFORE I BEGIN MY REMARKS, LET ME TAKE A MINUTE TO EXPRESS THE APPRECIATION OF NEW YORK, CONNECTICUT, MAINE, MASSACHUSETTS, NEW JERSEY, RHODE ISLAND, AND VERMONT TO YOU FOR YOUR ASSISTANCE IN CONVEYING OUR CONCERNS TO EPA REGARDING THEIR PROPOSED POST 1987 OZONE POLICY. SENATOR MOYNIHAN AND HIS STAFF WERE INSTRUMENTAL IN ARRANGING THE NOVEMBER 17 PRESS CONFERENCE.

I AM IN WASHINGTON AGAIN TODAY TO EXPRESS NEW YORK'S OPPOSITION TO THE ENVIRONMENTAL PROTECTION AGENCY'S PROPOSED POST '87 OZONE POLICY WHICH WOULD EXTEND THE DECEMBER 31, 1987 ATTAINMENT DATES BY SIX TO EIGHT YEARS.

FIRST, OF ALL IT IS NOT FOR EPA TO ISSUE, WITHOUT LEGISLATIVE AUTHORITY, A POLICY SETTING FORTH A MISGUIDED CLEAN AIR PROGRAM. THE EPA POLICY WOULD SET IN MOTION A NEW CLEAN AIR ACT PROGRAM OVER THE NEXT SIX TO EIGHT YEARS WITHOUT LEGISLATIVE AUTHORITY. THE ABSENCE OF LEGISLATIVE AUTHORITY WILL BEG LITIGATION AND TRANSFER TO THE COURTS THESE FUNDAMENTAL HEALTH, SOCIAL AND ECONOMIC ISSUES.

LET NO ONE QUESTION THAT THESE ARE FUNDAMENTAL PUBLIC HEALTH ISSUES. MILLIONS OF CITIZENS AROUND THE COUNTRY ARE SUBJECT TO UNHEALTHY AIR. THE STATES BELIEVE THAT A STEADFAST PROGRAM OF CONTROLS IS NECESSARY. THE EPA POLICY PROMOTES NON-ACTION AND THEN REWARDS IT. IT WILL CONTRIBUTE LITTLE TO IMPROVE THE QUALITY OF AIR. AND, IT HAS THE VERY REAL POTENTIAL TO REVERSE ACHIEVEMENTS ALREADY MADE. THE EPA ACTION, MISGUIDED AS IT IS, IS HOWEVER, AN ACTION TAKEN PARTIALLY IN FRUSTRATION, VERY REAL FRUSTRATION THAT WE IN THE STATES FEEL EVEN MORE ACUTELY. IT IS THE FRUSTRATION PRODUCED BY THE PROSPECT OF THE END OF THE FIRST SESSION OF THE 100TH CONGRESS, NOT WITHSTANDING THE LEADERSHIP OF THIS COMMITTEE, WITHOUT CONGRESSIONAL ACTION.

AS THE ATTACHED LETTER FROM KENNETH L. ALKEMA, DIRECTOR OF THE UTAH DIVISION OF ENVIRONMENTAL HEALTH, TO EPA ADMINISTRATOR THOMAS INDICATES WE ARE ESPECIALLY FRUSTRATED AT EPA'S CONTINUED REFUSAL TO JOIN WITH CONGRESS AND THE STATES IN DEVELOPING THE NEEDED CHANGES TO THE ACT.

IT IS PAST TIME FOR CONGRESS TO ACT -- TO ENACT A COMPREHENSIVE CLEAN AIR BILL INCLUDING NON-ATTAINMENT PROVISIONS, ACID RAIN PROVISIONS AND CONTROLS ON TOXIC EMISSIONS. EVEN IN THE FACE OF STEADFAST ADMINISTRATION OPPOSITION AND THE OPPOSITION OF MANY INTERESTS WHO WANT TO DELAY OR DEFER AIR POLLUTION CONTROL, CONGRESS MUST ACT.

THERE IS NO SECRET AS TO WHAT IS NECESSARY. NEITHER NON-ATTAINMENT ISSUES NOR ACID RAIN ISSUES WARRANT FURTHER STUDY, THE MASSIVE NATURAL EXPERIMENT PRODUCED BY THE WIDESPREAD FOREST FIRES IN THE CENTRAL ATLANTIC STATES VIVIDLY PROVE THE NECESSITY OF CONTROLLING POLLUTION AT ITS SOURCE TO PREVENT LONG RANGE TRANSPORT. INCLUDED IN THE MATERIAL I AM SUBMITTING FOR THE RECORD MR. CHAIRMAN, ARE A SERIES OF MAPS WHICH DOCUMENT THE MOVEMENT OF SMOKE FROM THE RECENT FIRES. WE ALL SAW IT; TRANSPORT OF POLLUTION ACROSS STATE LINES TAKES PLACE. EPA CAN NO LONGER MAINTAIN WE NEED ADDITIONAL INFORMATION TO ACT.

FURTHER DELAY MERELY INDICATES A LACK OF CONCERN FOR THE HEALTH OF THE AMERICAN PEOPLE AND THE QUALITY OF THE AMERICAN ENVIRONMENT.

I WANT TO EMPHASIZE NEW YORK'S POSITION. WE ARE NOT SEEKING THE TRANSFER OF OUR RESPONSIBILITY FOR POLLUTION CONTROL. WE WANT AND HAVE THAT RESPONSIBILITY. IN FACT, NEW YORK AND THE OTHER STATES HAVE BEEN UNANIMOUS ON THE NEED FOR CONGRESS TO ENACT ADDITIONAL PROVISIONS WITH FURTHER MEASURES OF CONTROL. WE OPPOSE ANY ADDITIONAL PLANNING OR MODELING REQUIREMENTS OF THE SORT EPA CALLS FOR IN ITS POLICY PRIOR TO THE APPLICATION OF SUCH CONTROLS.

LET US EXAMINE THE COMMITMENT OF THE STATES. IN NEW YORK, FOR INSTANCE, WE HAVE APPLIED REASONABLY AVAILABLE CONTROL TECHNOLOGIES (RACT) ON STATIONARY SOURCES LOWER THAN 10 TONS PER YEAR OF EMISSIONS AND HAVE DONE SO WITHOUT ANY TECHNICAL ASSISTANCE FROM EPA. THE FEDERAL REQUIREMENT CALLS FOR SUCH CONTROLS ONLY ON STATIONARY SOURCES EMITTING MORE THAN 100 TONS PER YEAR.

IN ADDITION TO RACT CONTROLS, NEW YORK HAS ADOPTED STAGE II VAPOR RECOVERY, HEAVY DUTY INSPECTION AND MAINTENANCE, AND AN ANTI-TAMPERING PROGRAM FOR ALL POST 1984 VEHICLES IN THE STATE.

IT IS ALSO CLEAR THAT THE FEDERAL GOVERNMENT HAS MAJOR RESPONSIBILITIES IF WE ARE TO ACHIEVE HEALTHFUL AIR IN THE METROPOLITAN AREAS ACROSS THIS COUNTRY. THE REDUCTIONS WHICH THE FEDERAL GOVERNMENT CAN PRODUCE RESULTS FROM THEIR AUTHORITY TO SET EMISSION CONTROLS ON MOBILE SOURCES. ADDITIONAL AND STRONGER EMISSION CONTROLS ON ALL MOBILE SOURCES AS WELL AS MUCH NEEDED CHANGES IN THE EPA CERTIFICATION PROGRAM FOR MOBILE ARE WITHIN EPA'S DISCRETION.

MR. CHAIRMAN, WE HAVE BEEN WAITING FOR FIVE YEARS FOR EPA TO ISSUE TECHNICAL GUIDANCE ON STAGE II. THEY HAVE NOT ISSUED THAT GUIDANCE. NEW YORK HAS BEEN FORCED TO IMPLEMENT STAGE II BY ONE ARM OF EPA WHILE MR. THOMAS NOW SEEMS TO BE SAYING STAGE II IS INAPPROPRIATE.

FEDERAL AUTHORITY OVER INTERSTATE TRANSPORT IS ALSO ESSENTIAL TO HEALTHFUL AIR. THERE IS NO LONGER ANY SCIENTIFIC UNCERTAINTY REGARDING OZONE TRANSPORT. THE STATES BY THEMSELVES CANNOT SOLVE THIS PROBLEM.

WITHOUT MOBILE SOURCE AND TRANSPORT CONTROLS, NO MATTER WHAT WE DO IN THE METROPOLITAN NEW YORK AIR QUALITY CONTROL DISTRICT, WE CANNOT PRODUCE HEALTHFUL AIR FOR OUR CITIZENS.

6.

ACID RAIN IS SUBJECT TO THE SAME ANALYSIS. NEW YORK ON ITS OWN AUTHORITY HAS REDUCED ITS UTILITY EMISSIONS TO A STATEWIDE AVERAGE OF 1.25 POUNDS OF SULFUR DIOXIDE PER MILLION BTUs. THE IMPOSITION OF THAT LEVEL OF CONTROLS ON OUR SOURCES IS NOW COSTING IN THE NEIGHBORHOOD OF $600 PER TON OF SULFUR REMOVED.

IN OTHER STATES -- ESPECIALLY THE MIDWESTERN STATES WHERE LARGE AMOUNTS OF COAL ARE BURNED -- RATES OF EMISSION EXCEED 3.5 AND, IN SOME CASES, ALMOST 4 POUNDS OF SULFUR DIOXIDE PER MILLION BTUs, AND THE COSTS OF CONTROL OF SULFUR IN THOSE STATES HOVERS AROUND $100 A TON.

THE FACT REMAINS, IF WE ARE TO PROTECT THE ENVIRONMENT FROM THE CONTINUOUS DEGRADATION IT IS NOW EXPERIENCING, IF WE ARE TO PREVENT THE HEALTH EFFECTS THAT ARE INCREASINGLY IDENTIFIED WITH ACID RAIN, IT IS NECESSARY TO ESTABLISH A NATIONAL CONTROL PROGRAM.

AGAIN, COMMON SENSE IS THE RULE. THE PROBLEM REQUIRES NO FURTHER STUDY. THE PACKING OF THE BIOSPHERE WITH AN EXCESSIVE 22 MILLION TONS OF SULFUR DIOXIDE PER YEAR DOES NOT REQUIRE GENIUS TO UNDERSTAND.

IN THE NORTHERN NEW JERSEY/NEW YORK CITY METROPOLITAN AIR QUALITY CONTROL REGION, THE AIR ENTERING OUR REGION OFTEN EXCEEDS THE HEALTH STANDARD FOR OZONE. WE KNOW IT, EPA KNOWS IT, AND THE RECENT EXPERIENCE OF THE SMOKE HEADING THROUGH OUR REGION FROM FIRES THROUGHOUT THE ATLANTIC SEABORAD PROVED IT. YET, EPA HAS NOT ACTED. IN THE BILLS PENDING BEFORE CONGRESS, EPA WOULD BE MANDATED TO ACT.

NEW YORK HAS FILED A PETITION UNDER SECTION 126 OF THE CLEAN AIR ACT AND THE ADMINISTRATIVE PROCEDURE ACT, AND HAS ALSO FILED A NOTICE OF INTENT TO BRING A CITIZEN'S SUIT UNDER THE CLEAN AIR ACT TO FORCE EPA TO FULFILL ITS DUTIES UNDER THE ACT RELATING TO OZONE POLLUTION AND TRANSPORT.

EIGHT NORTHEASTERN STATES HAVE SIGNED A MEMORANDUM OF UNDERSTANDING AGREEING TO REDUCE THE REID VAPOR PRESSURE OF GASOLINE IN AN EFFORT TO REDUCE VOC EMISSIONS.

THESE ARE EXAMPLES WHERE THE STATES ARE TAKING ACTIONS AVAILABLE TO THEM TO COMPEL THOSE STEPS WHICH ARE NECESSARY TO PROTECT THE HEALTH OF THEIR PEOPLE.

EPA HAS ABANDONED ITS ROLE IN THE PARTNERSHIP INTENDED TO ACHIEVE CLEAN AIR IN THIS NATION. WE WISH IT WERE OTHERWISE. WE SEEK A RESTORATION OF THE PARTNERSHIP WITH THE EPA THAT WILL MAKE THE FEDERALISM INCORPORATED IN THE CLEAN AIR ACT WORK. WE WILL DO OUR PART BUT WE NEED CONGRESS TO PUT EPA BACK IN ITS IMPORTANT ROLE. WE HAVE NO RECOURSE BUT TO TAKE WHATEVER LEGAL STEPS ARE AVAILABLE TO US AND TO COMPEL THESE ACTIONS.

WHEN THESE ACTIONS ARE TAKEN IN TOTAL, THE MESSAGE THAT EMERGES IS LOUD AND CLEAR -- CONGRESS MUST ACT AND CONGRESS MUST ACT IN THE 100TH CONGRESS.

WE WOULD HAVE PREFERRED CONGRESS TO ACT PRIOR TO THE DECEMBER 31, 1987 DEADLINE FOR ATTAINMENT. IF THE ACTIONS ALREADY TAKEN IN THE SENATE AND IN THE HOUSE DO NOT PRODUCE A BILL BY THAT DATE, IT IS INCUMBENT ON CONGRESS TO ACT EARLY IN THE SECOND SESSION OF THE 100TH CONGRESS.

THESE MATTERS CANNOT BE DEFERRED. FUNDAMENTAL QUESTIONS OF PUBLIC HEALTH AND ENVIRONMENTAL PROTECTION ARE AT ISSUE.

NEXT YEAR IS A PRESIDENTIAL ELECTION YEAR. MOST PRUDENT OBSERVERS OF CONGRESS AGREE THAT ACTION WILL BE NECESSARY BY JULY 1ST IF ACTION IS TO BE PRODUCED AT ALL. IT WOULD BE

UNCONSCIONABLE FOR CONGRESS NOT TO ACT IN THE FACE OF SUCH FUNDAMENTAL MATTERS OF PUBLIC POLICY. IF IT IS TO ACT, IT MUST BE BY JULY 1, 1988.

THE STATE OF NEW YORK, THEREFORE, SUPPORTS AS A LAST RESORT A VERY LIMITED EXTENSION OF THE NON-ATTAINMENT DEADLINE. FOR INSTANCE, NEW YORK WOULD SUPPORT SIX MONTHS TO JULY 1ST. IN ANY EVENT, NO EXTENSION SHOULD TAKE US BEYOND THE SECOND SESSION OF THE 100TH CONGRESS. IT IS TIME FOR LEADERSHIP. IT IS TIME FOR ACTION.

ONLY CONGRESS CAN EXTEND THE ATTAINMENT DATES IN THE CLEAN AIR ACT. NEW YORK WILL CONTINUE TO WORK WITH CONGRESS TO DEVELOP A PRUDENT, EFFECTIVE SET OF AMENDMENTS. WE ASK THAT CONGRESS MOVE THAT PROCESS AS EXPEDITIOUSLY AS POSSIBLE.

THANK YOU!

ATTACHMENT

CLEAN AIR ACT LEGISLATION

TESTIMONY OF

DAVID R. WOOLEY
Assistant Attorney General
State of New York

Before the

SUBCOMMITTEE ON
ENVIRONMENTAL PROTECTION

COMMITTEE ON ENVIRONMENT
AND PUBLIC WORKS

UNITED STATES SENATE

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December 2, 1987

BEFORE THE
UNITED STATES SENATE
SUBCOMMITTEE ON ENVIRONMENTAL PROTECTION

Testimony of

DAVID R. WOOLEY
Assistant Attorney General
State of New York

I wish to thank the Chairman and members of the Subcommittee for this opportunity to present the New York State Attorney General's view of EPA's proposed policy on attainment of national air quality standards. Attorney General Abrams regrets that he is not able to appear with Commissioner Jorling today. He asked me to express his strongly held belief that Congress must enact new comprehensive clean air legislation. EPA's new nonattainment policy is fresh evidence that the existing law is no longer a viable tool for improvement of air quality. Enactment of a bill, such as that approved by this committee in October, is needed to breathe new life into this nation's commitment to clean air and a healthy environment.

My own experience with the federal Clean Air Act spans nearly eight years full-time involvement in the air pollution policy debate. I have had principle involvement in over two dozen federal and state court cases concerning national air quality standards, acid rain and toxic air pollutants. It is painfully obvious to me that we have entered a period of legal

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chaos under the Clean Air Act, characterized by burgeoning litigation, stagnating air quality, and severe interstate inequities.

This policy gridlock is well illustrated by EPA's recent policy proposal regarding the widespread failure to achieve the national air quality standard for ozone. In short, the problem of ozone pollution of the earth's lower atmosphere has outlived and defied the cure prescribed for it in the Clean Air Act. As of January 1, 1988, the states and EPA will be operating in a legal no-man's land. The Clean Air Act, as amended in 1977, presumes that the national standard would be attained by the end of this year. Other than general references to sanctions, the Act establishes no guide posts for how state and federal agencies should respond to nonattainment conditions which persist after the deadline has passed.

Nevertheless, EPA has assumed the power to define state and federal obligations in the period after the 1987 attainment deadline. The policy has several major deficiencies. First, there is no legal basis for it in the Act. Second, EPA proposes to repeat the national policy errors which are unlikely to result in significant emission reductions and which are directly responsible for the current intolerable situation.

The policy's legal flaws are demonstrated by the recent decision of the United States Court of Appeals for the Ninth Circuit. On November 3, 1987, that Court held that EPA must disapprove state air quality plans which do not demonstrate attainment of the national standards by the December, 1987

deadline. Abramowitz v. United States Environmental Protection Agency, 26 ERC 1721 (9th Cir. Nov. 3, 1987). The effect of such disapproval is to set in motion procedures leading to imposition of severe economic sanctions upon the states, and, theoretically, a federal take over of state air quality planning and implementation. 42 U.S.C. §§ 7410(c); 7506(a).

A similar result is likely in the case of a challenge to EPA's approval of a state plan that demonstrates attainment many years after the 1987 deadline. The Act very clearly states what must be in a nonattainment plan in order to qualify for EPA approval, and attainment by the fixed deadline is the central criteria for approval. After December 1987 many state plans simply cannot meet that requirement. 42 U.S.C. § 7502.

EPA's assertion of power to allow states up to eight additional years to attain the national standards directly contradicts the holding of the Ninth Circuit case. The EPA policy is not likely to survive the inevitable flurry of court challenges, and it is just a matter of time before someone decides to turn up the heat by filing district court litigation to force EPA to impose sanctions and direct federal control over air pollution planning in non-attainment areas. The finalization of EPA's policy next spring will generate dozens of additional challenges in the U.S. Courts of Appeals. Meanwhile, the states of the northeast will have no choice but to attempt other court actions to force EPA or upwind states to reduce interstate air pollution.

In short, EPA and the states will become embroiled in a

morass of litigation occurring in a statutory vacuum. Federal courts will be asked to resolve intractable legal and scientific claims without statutory guidance. The results of litigation from various courts are likely to be contradictory and inconclusive. Consequently, efforts to improve air quality will to grind to a halt.

Aside from its legal defects, EPA's new policy has other severe practical limitations which will prevent it from achieving significant emission reductions. The policy's defects mirror the Agency's well documented failures to implement the principle requirements of the Act as a whole.

The most apparent substantive problem with the policy is its failure to address ozone as an interstate air pollution problem. It is widely recognized that ozone precursors, like acid rain, are transported long distances from their point of emission. The inability of New York to attain the ozone standard is caused in large part by the cumulative effect of VOC and NO_x emissions from upwind states. EPA's past policy has been to ignore this phenomena, and treat ozone nonattainment as a local problem. EPA's new policy, while paying lip service to the long range transport problem, again fails to effectively address it. Under EPA's proposal large areas of the midwest, mid-appalachian and lower mid-atlantic states, which export huge amounts of NO_x and VOC's, will escape further controls on stationary and mobile sources. EPA proposes only minor tightening of state control plans in these geographic areas. This will have little or no effect on regional ozone concentrations. Consequently, virtually

the entire burden for emission controls will fall upon a handful of cities along the eastern seaboard. It is clear that these cities need to do more to control their own emissions, but it is also clear that the burdens are not being fairly distributed. The effect is to prolong unhealthy air conditions throughout the region.

All of this is reflective of EPA's seven year campaign to misconstrue and destroy the interstate pollution provisions of the Act. The Northeast states continue their legal battles to effectuate these provisions in regard to the problem of acid rain. But, to this day those provisions have remained a dead letter in the congressional plan for clean air.

EPA's new policy also continues the error of ignoring or postponing national pollution control initiatives for mobile sources and fuel. EPA still refuses to consider tightening tailpipe emission limits for new cars. Similarly EPA's proposal for "On Board" gasoline vapor controls is still only in the proposal phase. It will have no major effect on emissions until the mid or late 1990's. EPA's ambivalence toward gas vapor controls has so far only served to disrupt efforts by some states to achieve near term reductions in gasoline vapors through "Stage II" programs.

EPA's proposal for reduction in volatility of fuel is also too little and too late. The proposal is significantly weaker than the plan developed independently by the Northeast States. It will probably take several years for EPA to move beyond the proposal phase. In the meantime, opponents of volatility

controls and gasoline vapor recovery requirements are using EPA's proposals to delay or defeat the states' programs.

EPA's new policy also reflects its tragic failure to develop an air toxics program. The new policy states that EPA and the states should coordinate air toxics controls with ozone control efforts. But it is obvious that EPA's air toxic program has been a complete failure. EPA has managed to regulate only a handful of ultra-toxic air pollutants in the 17 year history of the Act. EPA has vigorously resisted attempts by environmental groups and New York to force it to control the obvious dangers posed by dioxin and heavy metal emissions. During the past seven years, EPA has also managed to scuttle the provisions designed by Congress to remedy international air pollution problems and visibility impairment. It has also perverted the statutory process for setting national air quality standards. Although the Act clearly requires EPA to set standards to protect against all adverse effects of pollutants on the environment, EPA consistently refuses to consider acid rain effects in the revision of the particulate and sulfur dioxide standards.

In short, EPA has generally succeeded in destroying the effectiveness of virtually every major provision of the Clean Air Act.

Clearly, the public expects and demands a strong and effective program to protect and enhance air quality. Congress cannot in good faith stand idly in the face of evidence that EPA has achieved a nearly total subversion of the Clean Air Act.

I will close by pointing out that the problems of ozone nonattainment, interstate air pollution, acid rain and air toxics are highly interrelated. NO_x and VOCs not only cause region-wide ozone problems, they also are precursors of acid rain and contribute to the looming problem of global warming.

Congress cannot hope to address these problems in a piecemeal fashion. It should reject Administrator Thomas' advice to enact a bill limited to the nonattainment problem. Instead, we urge the Congress as a whole to adopt a comprehensive bill, such as that passed by this Committee. That bill would correct the mistakes contained in the proposed ozone policy and EPA's failure to implement other vital portions of the 1977 Act. The Subcommittee, and particularly its chairman, are to be congratulated for an excellent bill, and we intend to continue to work hard for its passage.

Respectfully submitted,

DAVID R. WOOLEY
Assistant Attorney General
State of New York

December 2, 1987

National Governors' Association

John H. Sununu
Governor of New Hampshire
Chairman

Raymond C. Scheppach
Executive Director

STATEMENT ON BEHALF OF THE NATIONAL GOVERNORS' ASSOCIATION

ON

EPA'S PROPOSED REGULATORY POLICY FOR OZONE

AND CARBON MONOXIDE

by

MR. KENNETH ALKEMA, DIRECTOR

UTAH DIVISION OF ENVIRONMENT HEALTH

and

MR. RICHARD DEWLING, COMMISSIONER

NEW JERSEY DEPARTMENT OF

ENVIRONMENTAL PROTECTION

DECEMBER 2, 1987

Mr. Chairman and members of the committee, we are here this afternoon on behalf of the National Governors' Association to comment on the EPA's regulatory strategy for areas that fail to meet the federal standards for ozone and carbon monoxide by the end of this year.

As you are aware, between sixty and seventy areas in forty states are expected to miss the year-end deadlines for ozone and carbon monoxide. The National Governors' Association has urged this Congress to act quickly on the reauthorization of the Clean Air Act in order to provide guidance to the EPA and to those areas. We are pleased that Lee Thomas has also indicated that reauthorization is critical, and by his willingness to consider the EPA strategy as a blueprint for his legislative proposal. We know he shares our view that it is imperative to ensure that the air our citizens breathe meets the federal health-protective standards, and to remove the cloud of economic uncertainty hanging over nonattainment areas.

As you may know, an ad hoc group of state environmental commissioners and air program directors met with Mr. Thomas and other top EPA officials on September 23 to discuss an earlier draft of the regulatory strategy. We are pleased that several changes appear to have been made in the strategy to reflect the concerns we expressed at that meeting. For example, the requirement for 3 percent reductions to begin immediately in severely polluted areas reflects our recommendation that any stop-gap strategy should emphasize control measures over mere planning activities. However, I wish to add that we also indicated the strategy did not represent an acceptable solution to the problems we confront in ozone and carbon monoxide nonattainment areas, and that we urged EPA not to publish it.

We continue to have several strong concerns regarding both legality and the particulars of the EPA proposal. Let me be more specific.

First, the states are very concerned that the proposed strategy subjects them to legal uncertainty, invites citizen suits, and abdicates control over sanctions and deadlines to the federal judiciary. These concerns were heightened by the recent decision by the Ninth Circuit Court of Appeals in the Abramowitz case, which suggests that EPA does not have the legal authority to approve any state implementation plan providing for attainment after the end of 1987, without imposing sanctions. We do not believe that we should be subject to the legal challenges and uncertainty that this strategy inevitably invites. The results of the individual law suits the states and the EPA will face under this proposal will not add up to fair or consistent environmental policy across the nation.

Beyond the proposal's uncertain legal status, we are concerned about several substantive provisions. Most importantly, we believe that the proposed policy places an undue share of the control burden on the states, without providing for the aggressive federal role and support that is necessary for states to succeed. For example, we believe that EPA can and should use its current authority to adopt some federal control measures such as standards for consumer solvents and architectural coatings. It makes no sense to attempt to regulate these products on a state-by-state basis. EPA should also define and adopt reasonably available control requirements for some currently uncontrolled hydrocarbon pollution sources, and tighten programs aimed at controlling mobile source emissions. By failing to take

these steps at the federal level, the EPA deprives the states of the tools that would allow us to do a much more effective job of controlling pollution, and subjects us to battles in our legislatures against the specter of interstate inconsistency and industrial flight to "pollution havens." While the states are willing to take their share of the tough ones, we don't believe EPA should vacate the field and leave us to fight all the battles alone.

An example of a problem that the states cannot resolve under their own authority, and where we find the proposed strategy lacking a meaningful federal role, is the interstate transport problem. The proposal only promises that at some time in the future EPA will develop an ozone transport model and require affected states to submit yet another state air plan. In the meantime, many states will remain under the construction ban, despite adopting significant additional controls, because the air entering their states already violates the federal ozone standards. The Governors have recommended that the EPA define and adopt reasonably available controls on existing hydrocarbon air pollution sources, with special emphasis on areas where these emissions contribute to violations of the federal standards, without regard to whether they are in the same state or area as the violation. We also believe there is a legal and scientific basis for the agency to define multi-state air quality control regions and require fundamental controls on ozone precursors in areas that interfere with attainment in downwind areas. The draft strategy does not commit to this kind of approach.

The proposed strategy also applies sanctions in a manner that we find to be unfair and counterproductive. Under the proposal, areas that can

demonstrate attainment in the near term can avoid the construction ban, while other areas, including many of the nation's major economic centers, are subject to it without relief. The Governors have recommended that there be a deadline extension that allows all areas in the nation to avoid sanctions, provided they adopt additional control measures. We do not believe it is equitable to apply the construction moratorium to all of the most seriously polluted areas in the nation without providing any way for them to relieve the moratorium through the adoption of additional controls.

As a final note, I would add that the strategy will require planning efforts that will consume enormous resources by states and communities. Obviously, planning is important to pollution control, but planning should not be a substitute for control efforts. We believe it is imperative that more control technology guidelines and more reasonable federal control measures accompany the new planning requirements in the EPA strategy.

In conclusion, we believe it is critical for the 100th Congress to reauthorize the Clean Air Act and provide EPA and the states clear direction on the use of our respective authorities, the imposition of sanctions, the resolution of the interstate transport problem, and on other important issues. The proposed strategy is not a satisfactory substitute for reauthorization.

Unfortunately, in our view, the scope and reach of the EPA proposal makes it appear to be a substitute for action in this Congress. We believe the proposed EPA policy is seriously flawed, and that the entire policy should be withdrawn in favor of final action on the Clean Air Act reauthorization bills now pending in the Congress.

Testimony
by

Roy Romer
Governor of Colorado

EPA's Proposed Post-1987
Clean Air Act Non-Attainment Policy

Submitted to

Environment and Public Works Committee
U.S. Senate

December 2, 1987

Colorado welcomes this opportunity to comment on the Environmental Protection Agency's proposed policy for dealing with those areas of the nation which will fail to meet the federal Clean Air Act's attainment deadline for ozone and carbon monoxide standards.

As members of this committee likely are aware, four areas in Colorado will fail to meet federal standards for carbon monoxide by the December 31, 1987, deadline. This is the case despite significant efforts on the part of these four areas to reduce carbon monoxide levels.

Therefore, we agree with EPA that some delay in the imposition of sanctions is essential to allow us time to exercise further efforts to comply. However, any extension of the deadlines should be tied to tightening of key requirements designed to result in compliance. We believe the particular extension proposed by EPA does not meet this criteria for several reasons.

First, Colorado believes the proposed policy would discourage further efforts to reduce carbon monoxide levels. It would require areas in violation of federal standards to show only a three percent average annual decrease in pollution levels. The Colorado Department of Health estimates that Denver could comply with this policy through the year 1998 without adopting a single new strategy beyond those already in place. This would be the case even though Denver continues to suffer from some of the highest carbon monoxide levels in the nation.

Second, Colorado believes the proposed policy will not provide non-attainment areas like Denver with the tools necessary to clean its air. We recognize Colorado's air quality problems must be solved by Coloradans, and we are proud of the steps we are taking locally to reduce carbon monoxide levels. But we simply will not meet federal standards without further help from the federal government in the form of tighter restrictions on automobile emissions. The proposed EPA policy provides no such assistance and will hurt rather than help our efforts to lower pollution levels.

Third, the EPA's approach to non-attainment seems to us to be directed toward the needs of areas with ozone problems. These areas are predominently in the East and on the West Coast. Concern about carbon monoxide problems in the West seem to be discounted. As Governor of a western state, I find this unsatisfactory. Any policy which is intended to address carbon monoxide non-attainment in the West simply must account for the characteristics of that region and its problems. The current proposal has been designed predominantly for a different region with different problems than ours and at best will be a poor fit. At worst, it will hamper the progress we now are making.

Let me repeat Colorado's support for some extension of the attainment deadline in the Clean Air Act. But any extension of clean air standards must be linked closely to continuing best efforts to comply with tightened requirements. Without a policy requiring areas such as Denver to continue to work hard towards compliance, there will be a reduced incentive to make the difficult policy choices necessary to clean our air.

We believe the appropriate method for extending the deadline is through amendments to the Act now being considered by Congress. Colorado already has contacted the appropriate committees in both houses of Congress to express support for tighter tailpipe emission standards, cold-start emission standards, increased high altitude in-use testing and other provisions which meet Colorado's needs. Without these provisions, air quality in growing areas such as Denver will deteriorate further.

I fully understand that the EPA wishes to help areas with air quality problems achieve federal standards quickly and with minimal disruptions. However, for the reasons outlined above, the post-1987 non-attainment policy it proposes would probably hurt rather than help cities such as Denver in their efforts to clean their air. I therefore urge you to oppose its implementation and to proceed with consideration of Clean Air Act amendments.

Thank you for the opportunity to comment on the proposed policy.